

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE SOUTHERN DISTRICT OF OHIO  
3                               WESTERN DIVISION, CINCINNATI  
4  
5       EVERETT W. WHISMAN, et al.: Case No. C-1-02-406  
6                               Plaintiffs,                               : Judge Beckwith  
7       V.                               : Magistrate Sherman  
8       ZF BATAVIA, LLC, et al.,       :  
9                               Defendants.                               :

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10                              Deposition of RICK ERVIN, taken on Tuesday,  
11       August 5, 2003, commencing at 1:47 p.m., at the  
12       offices of Baker & Hostetler LLP, 312 Walnut  
13       Street, Suite 3200, Cincinnati, Ohio, before  
14       Susan M. Barhorst, Notary Public.

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16

Cross-Examination

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1	ERVIN DEPOSITION EXHIBITS	MARKED/IDENTIFIED
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1 RICK ERVIN

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HUNTER:

5 Q. Will you please state your name for  
6 the record?

7 A. Rick Ervin.

8 Q. Rick, you know me. I have --  
9 obviously represent Batavia. Have you ever been  
10 deposed before?

11 A. No, I have not.

12 Q. Okay. And I think you came in late  
13 this morning. So let me try and give you a couple  
14 ground rules, in terms of the deposition. I have a  
15 tendency to speak rather quickly from time to time.

16 So if I either mumble, you can't  
17 understand me, can't hear me, whatever, and you  
18 feel you can't fairly answer my question, just stop  
19 me and let me know and I'm happy enough to fix that  
20 for you --

21 A. Okay.

22 Q. -- okay?

23 A. Yes.

24 Q. If at any time you need a break, feel

1 free to take a break. I would ask that if you need  
2 that break, that if there's a question that hasn't  
3 been answered, that before you take the break, you  
4 answer the question and we can kind of -- we can go  
5 from there.

6 A. Okay.

7 Q. Is there anything today, in terms of a  
8 medical or other personal type issue that would  
9 prevent you from being able to go forward with your  
10 deposition today?

11 A. No.

12 Q. Okay. I will -- Rick, what's your  
13 current address?

14 A. 3470 White Oak Road, Blue Creek, Ohio  
15 45616.

16 Q. Okay. And your current position with  
17 Batavia is?

18 A. LPM, production.

19 Q. And if I say the term "Ford  
20 transitional," what does that mean to you?

21 A. Ford transitional, that means a former  
22 Ford employee who transitioned to ZF.

23 Q. Okay. And that would be someone that  
24 basically quit Ford Motor Company and came on as

1 a -- an employee of ZF Batavia?

2 A. Yes.

3 Q. Okay. And you would be a Ford  
4 transitional, right?

5 A. Yes, I am.

6 Q. Okay. Just wanted to make sure before  
7 we get too far in the discussion today we use the  
8 same vernacular, so -- all right.

9 My understanding is that there is a  
10 perception that certain -- I think the term has  
11 been used promises or representations have been  
12 made to Ford transitional employees that have not  
13 been followed through on by ZF Batavia. Do you  
14 share that understanding?

15 A. Yes, I do.

16 Q. Can you tell me what representations  
17 or promises were made from your point of view that  
18 have not been followed through on?

19 A. I can try.

20 Q. Okay.

21 A. The ones I can remember or come to  
22 mind, Pay for overtime would be one. The amount of  
23 personal days, which has been rectified.

24 Q. Okay.

1 A. The ability to retire and hire back.

2 Q. Okay.

3 A. The -- the opportunity to get into CVT  
4 on the ground floor.

5 Q. Okay.

6 A. To be represented by -- by a committee  
7 to take a look after the transition employees' best  
8 interests. That's all that come to mind right now.

9 Q. If you think of something -- now it's  
10 not a trick question.

11 A. Okay. That's all that come to mind  
12 right now.

13 Q. And if I were to guess, my perception  
14 is that the retire-rehire is your primary issue; is  
15 that fair?

16 A. No, I wouldn't say --

17 Q. Okay.

18 A. No. It is an issue. I have issue  
19 with -- I had issue -- I've always had issues with  
20 all of those.

21 Q. Okay.

22 A. The most recent were the retirement  
23 issue and then a -- and then a demotion also.

24 Q. Okay.

1           A.     And -- and those were the most recent.

2           Q.     All right. Well, let's talk about the  
3 demotion issue --

4           A.     Okay.

5           A.     -- for a second because you didn't  
6 mention that in the first instance.

7           A.     Right.

8           Q.     Do you feel there was a -- some sort  
9 of promise or something made to you personally with  
10 respect to the motions or -- I guess can you flush  
11 that out for me a little bit?

12          A.     Yeah, I think I can.

13          Q.     When I transitioned from Ford where  
14 I'd been for 26 and a half years, I was one of the  
15 two production superintendents for ZF. I  
16 functioned at that level, which subsequently became  
17 champion, area manager, business manager, business  
18 operations manager, a lot of different titles.

19                 But during the time I been with ZF,  
20 I've had very good reviews, extremely good. I've  
21 done very well. And recently I was demoted and  
22 I'll say without -- without cause.

23                 And I say that because we had a  
24 meeting. Dave Adams called a meeting where I had

1 to sit in this meeting and in the meeting, he said,  
2 Rick, I have -- I have reason to believe or I  
3 suspect that you're a little upset with us. And I  
4 said, Well, yeah, yes, Dave I am. And because I  
5 had just been demoted.

6 And he said, Well, why do you think  
7 that is? And I said, I don't know. And he went to  
8 Len Sennish, who was sitting there and said, Len,  
9 Rick's worked for you the last year on two  
10 different jobs, training manager and temporary HR  
11 manager. Has he done what you asked him to do, to  
12 which Len responded, He's done everything I asked  
13 him to do and then some?

14 Reuger was there, but he didn't say  
15 anything. Dick Newark, then, said, Well, I just  
16 decided that I wanted to go in a different  
17 direction and I wanted to try some combinations.  
18 And I think putting Rick with Keith in assembly is  
19 what I want to try.

20 Q. Hang on one second. Keith Holmes?

21 A. Yes.

22 Q. And putting Rick with Keith, who's  
23 Rick?

24 A. Me.

1 Q. Okay.

2 A. I'm sorry.

3 Q. I wanted to make sure I knew who --  
4 which Rick we're talking about.

5 A. At that point, he also -- Dick also  
6 said that, even though he's going to be an LPM or  
7 function as an LPM, I'm going to leave him at the  
8 BM level. But a week later on the organizational  
9 chart, it's an LPM and that's what it is. It's  
10 been referred to that since then.

11 Q. Okay.

12 A. And that's what I mean by the  
13 demotional thing.

14 Q. Okay. Is that --

15 A. I'm sorry. I'm a lower level now than  
16 I was when I transitioned.

17 Q. In terms of your perception of your  
18 responsibilities?

19 A. (Witness nodded.)

20 Q. But there hasn't been any economic  
21 consequences, certainly, has there? Your salary  
22 hasn't been reduced?

23 A. No, it has not been reduced.

24 Q. Okay.

1           A.     Now, would it have increased if I'd  
2     stayed at that level? I don't know that it could  
3     have if I stayed at a BM level.

4           Q.     Okay. Well, I mean, but as I  
5     understand it, your history -- your pay has  
6     increased every year since you came over to the  
7     joint venture?

8           A.     Yes, it has.

9           Q.     Okay. Are you telling me you think it  
10    would have increased more or --

11          A.     I think if I had -- maybe I'm jumping  
12    the question. If I had stayed Ford, it very well  
13    could have jumped quite a bit more.

14          Q.     Okay.

15          A.     With ZF, yes, it has increased every  
16    year. Would it have -- I mean, I just had this  
17    demotion recently, so I have no way of knowing that  
18    yet.

19          Q.     Okay. And I guess to go back a little  
20    bit, though, in terms of what was told to Ford  
21    employees who became transitionals, do you think --  
22    is your allegation that your demotion is somehow  
23    related to a promise or representation that was  
24    made to you, or is it just something more specific

1 to Rick Ervin?

2 A. Okay. I guess both. I think, yes,  
3 it's got something to do with Rick Ervin and that  
4 might be the plant manager and Rick Ervin.

5 Q. Okay.

6 A. Do I think that it's something to do  
7 with the transitional, very well could be because  
8 I -- I do think there are a lot things, decisions  
9 made that do affect the transitional people  
10 differently.

11 Q. Such as?

12 A. Such as -- well, one meeting comes to  
13 mind and -- and I don't want to --

14 Q. That's okay.

15 A. -- get into long stories. But when I  
16 transitioned -- as I told you, I was the  
17 superintendent. And then Dick changed it to area  
18 managers. And we did that for about six to nine  
19 months.

20 At that point, Dave Adams called me in  
21 his office, wanted to have a meeting with me. And  
22 I went in there and he said, Rick, we've just been  
23 talking, ZF management, and we've decided -- and  
24 the only reason I'm talking to you today is we've

1 decided you're salvageable. And I said, Well, what  
2 does mean, Dave? He said that means that we think  
3 we can get the Ford mentality out of you and get  
4 you into the ZF way of thinking. That would be  
5 what I would say is a strong example of the  
6 difference in Ford and ZF.

7 Then another example would be with  
8 Dick Newark. During that meeting with Dave, he  
9 asked me to go to another part of the building,  
10 which he classified as the armpit of the building  
11 at the time.

12 Over the next year, we, as a team,  
13 turned that whole area around. Well, Dick Newark  
14 came down and after about a year and said, Rick,  
15 I'm taking you off this job. I said, Oh, okay.  
16 You're the boss, but why? And he said, Well, I  
17 want to try to get the Ford influence off the floor  
18 and go in a new direction.

19 Q. With respect to the Ford influence,  
20 you understand the concept or the differentiation  
21 and the concept of lean manufacturing versus what  
22 was historically at Ford Batavia, which was mass  
23 production, though?

24 A. I understand the concept of lean

1 manufacturing. But whether they called it that or  
2 not, I think Ford, even though it was mass  
3 production, also operated under lean manufacturing  
4 quite a bit because lean manufacturing with ZF  
5 hasn't changed much at all versus what it was with  
6 Ford, hardly any, if any, other than terminologies.

7 Q. Okay.

8 A. Like I'm a lean processing manager  
9 now.

10 Q. With respect to the comments that  
11 you've contributed to Dick and Dave, is it your  
12 opinion that that's not the influence that they  
13 meant? Did they mean something else by that, then?

14 A. The fact that they used -- that both  
15 of them used Ford in those statements, to me, would  
16 say that -- you know, they -- they -- yes, they  
17 have a different feeling about Ford people.

18 Q. Okay.

19 A. And I have -- I been in -- and I don't  
20 remember all -- but I been in a lot of the meetings  
21 up front when they've talked. I remember Dick  
22 and -- and Len in a meeting saying, Well, you'll  
23 never see us drive a Ford car. So, yes, there have  
24 been specific instances and -- and I do believe

1       that.

2               Q.     Okay. All right. The first item that  
3     I think you mentioned was pay for overtime. What  
4     was -- to your way of recollection, what was told  
5     to you about overtime pay?

6               A.     Okay. Back when we were in the  
7     meetings, meetings up front, that was on a lot of  
8     people's minds that were trying to make the  
9     decision whether to transition or not. That was  
10    one of the main things that was on everybody's  
11    mind.

12               And during that time period in those  
13    meetings, those questions were asked. I didn't ask  
14    it specifically, but it was asked, Do we get -- do  
15    we still get paid for overtime? And the answer was  
16    your pay structure won't change.

17               The guy that I contacted with mostly  
18    then was a guy named Rick Williams, who, at the  
19    time, was the first production manager under ZF.  
20    Now he's the quality direct for ZF. And I did a  
21    lot of talking with -- with Rick and Jerry Priest,  
22    Hassan Saleh about those kind of questions and --  
23    and I brought those up subsequently with them. And  
24    they said the same thing. Well, yeah, your

1 overtime or your pay structure will stay the same.

2 If you get paid now, you'll get paid then.

3 That -- that -- for me ultimately came  
4 to a head when I was working for Ray Pablice and he  
5 came to me and said, Rick, you're not going to get  
6 paid for overtime any more. And I said, Ray, how  
7 can that be? I was told that nothing would change,  
8 that it would remain the same. And he said, Well,  
9 let me get back to you.

10 And he came back the next day and  
11 said, Well, they said -- and he didn't define  
12 "they." But they said that no matter what you were  
13 promised before, they're here now and they're going  
14 to do what's best for ZF, you know. And they're  
15 going to make the decisions that are best for ZF.  
16 So you don't get paid for it anymore.

17 Q. Okay. Let me go back and get a little  
18 more, okay? Now, you made the reference to  
19 meetings, your comment was that these meetings had  
20 made --

21 A. The -- the meetings up front where  
22 Ford came down and it was a -- Ford and Dave Adams,  
23 Karl Kehr. I don't remember all the names, but --

24 Q. Was this what we've referred to before

1 as the May meeting in the cafeteria?

2 A. Yes.

3 Q. Okay.

4 A. There were -- there was more than one.

5 Q. There were two on May 27th, one for  
6 like the day shift and one for the night shift or  
7 afternoon shift. Does that sound right?

8 A. Probably. That sounds like it could  
9 be right, but I only know about the one on day  
10 shift because that's the one I went to.

11 Q. Okay. Which would have begun perhaps  
12 around 8:30 in the morning, that one?

13 A. Yes.

14 Q. Okay. Had you been presented your  
15 offer letter prior to that May meeting?

16 A. I don't recall.

17 Q. Okay. All right. So you were present  
18 at the May 27th meeting. You went to the one in  
19 the morning because you were working days at that  
20 time?

21 A. Yes.

22 Q. All right. Do you remember any  
23 specific quotes from that meeting, in terms of what  
24 you were told?

1 A. No, not specific --

2 Q. Okay.

3 A. -- quotes, I don't 'cause we followed  
4 a presentation and then they had questions  
5 afterwards and everyone just asked the questions  
6 that they wanted to know.

7 Q. Okay. Well, when you say there was "a  
8 presentation," was that the slide presentation?

9 A. I remember the slide presentation. I  
10 think it was that meeting.

11 Q. Okay. Do you remember who spoke at  
12 the meeting?

13 A. I remember from -- from Ford, there  
14 was a guy named Lee Mezza at one of the meetings.  
15 I don't know if it was that meeting specifically  
16 because they kind of run together. Hart -- Hartman  
17 or someone like -- I remember that name. And then  
18 there was at those meetings, Karl Kehr, Dave Adams  
19 and I don't recall the other people.

20 Q. Now, and you say "at those meetings,"  
21 but, in fact, you only went to the one, correct,  
22 the morning one?

23 A. Well, there was -- I -- there was  
24 another meeting up front. We had a couple meetings

1 up front with the same basic -- Ford came down and  
2 representatives --

3 Q. Okay.

4 A. -- talked to us. But at that one,  
5 that's what I mean about the meetings running  
6 together.

7 Q. Okay. And that's what I want to try  
8 do. As much as you can, let's stick right now with  
9 the May 27th one. And it sounds like there's  
10 meetings before that and we'll talk about it in a  
11 second. All right.

12 So just so we're clear, you remember  
13 Lee Mezza, maybe Hartman, Karl Kehr, Dave Adams, I  
14 think was the list you gave me for the 27th?

15 A. I -- I can't --

16 Q. Just what you remember.

17 A. -- be sure. Yeah, I believe Dave  
18 Adams. I can't remember if he was at that one, but  
19 I thought he was at all of them. The other ones, I  
20 remember those guys.

21 Q. But there's no specific quotes that  
22 you could remember as to any of these gentlemen or  
23 what was said there?

24 A. No.

1 Q. All right. Do you remember -- can we  
2 have Exhibit 2? Are you familiar with Exhibit 2,  
3 Rick?

4 A. Yes, I am.

5 Q. Okay. Do you remember, did you have  
6 one of these at the meeting on the 27th, Exhibit 2?

7 A. I do not remember that.

8 Q. Okay.

9 A. I'm trying to remember when the --  
10 when these came out or when exactly that I remember  
11 seeing these and I can't -- I can't remember  
12 exactly. It could have been attached to some  
13 papers they gave me or it could have been handed  
14 out at one of the meetings. But I've had several  
15 of these over the years and I don't really remember  
16 when I first got them.

17 Q. Okay. All right. Now, let's go back  
18 in time from May 27th. I think you'd mentioned you  
19 had discussions, meetings with Rick Williams, Jerry  
20 Priest and Hassan Saleh?

21 A. Yes, sir.

22 Q. Can you give me how many meetings or  
23 were these discussions just out on the plant floor  
24 or --

1           A.     The discussions were mainly out on the  
2     plant floor --

3           Q.     Okay.

4           A.     -- with Jerry and Hassan. And at the  
5     time, Jerry, Hassan, Rick were all also trying to  
6     make a decision whether they are going to  
7     transition. So it was general discussion 'cause I  
8     know them all very well. What do you think about  
9     this or that, and I don't remember specifics.

10                     But with Rick Williams, he was my boss  
11     at the time and we had a lot of discussions in his  
12     office up in our block house.

13           Q.     Okay. And --

14           A.     And Rick was a guy that everyone went  
15     to with a lot of questions. I mean, Rick had a lot  
16     of information.

17           Q.     Okay. And to a certain extent, I  
18     would assume, though, that aside from these  
19     gentlemen, that there were others out there that  
20     you had discussions with because, to a certain  
21     extent, all the salaried folks were at least at  
22     this point in time, in terms of when am I going to  
23     go, am I not going to go, correct?

24           A.     There were a lot of people in that

1 position, but I don't remember having conversations  
2 with them. I may have in passing, but when I  
3 wanted the information, I wanted to go to the  
4 people that I thought would really know.

5 Q. Okay.

6 A. And most of the people -- other people  
7 knew less than I did probably, so --

8 Q. Okay. All right. Are there any  
9 specific conversations that you can recall with  
10 respect to Rick, Jerry or Hassan?

11 A. With Rick, I recall asking him about  
12 the retirement plan because he was fairly close to  
13 the same position. He has a couple less years'  
14 seniority than I do, so that -- I knew that would  
15 be -- that would interest him and also Jerry  
16 Priest, who actually has a couple months more  
17 seniority than I did. And they were both concerned  
18 about it.

19 Ultimately Rick basically said the  
20 same thing. And he's a director now, and that is,  
21 oh, yeah. When you retire, when you get your 30  
22 years combined service, you can retire and hire  
23 back with ZF, which was a big point -- you know,  
24 that some of the people -- okay. That's great. I

1       like that. And let me expound on that, if I can.

2               Q.     Mm-hmm.

3               A.     I know that after the meeting that I  
4       referred to with Dave Adams earlier, I know that  
5       Dave Adams went to Rick and said, I believe Rick --  
6       this Rick, is upset. Do you know why?

7                     And Rick, because I talk to Rick,  
8       said, Well, yeah, Dave. There's some things -- you  
9       know, that -- you know, one, you demoted him, can't  
10      even give him a reason. And, two, you told -- you  
11      told us we could retire and hire back. And now  
12      we're not going to do that.

13                    And I say "we're not going to do that"  
14      because I had a running conversation with Sarah  
15      Orwig, HR in Dearborn; with Karen Taylor, NESC; and  
16      Len Sennish about that topic because it was getting  
17      close for me, to which originally Sarah, Karen and  
18      Len all said, Well, yes, you can do that. What you  
19      did with Ford is your business, so -- you know,  
20      that's not a problem.

21               Q.     Okay. Well, let's put a time frame on  
22      that. The conversation you're referring to with  
23      Sarah, Karen and Len Sennish was in December last  
24      year, January of this year?

1 A. Something like that, yes.

2 Q. Okay. So it wasn't anywhere near May  
3 of 1999?

4 A. Right.

5 Q. Okay.

6 A. Okay. The original question with Rick  
7 Williams, yes, that's what he had said. He -- he  
8 felt the same way.

9 Q. Okay. And I didn't mean to cut you  
10 off --

11 A. No, that's okay.

12 Q. -- in that comment, but just to  
13 understand the timing here.

14 A. Yes. Another thing with Rick at that  
15 time was I remember going to him and saying, Rick,  
16 I do have some concerns. You know, I'm getting  
17 ready to make this decision. I have heard that all  
18 the engineers in the building have decided not  
19 to -- not to go with ZF, to stay with Ford. That  
20 would kill us.

21 And he said, Yes, we've heard the same  
22 thing. We have a plan for that, you know. And  
23 that plan is we're going to make them stay here.  
24 We're going to keep them here two to four years,

1 hire people and let them buddy up with them and  
2 learn the jobs and then start releasing them. I  
3 said, Okay. That sounds like a good plan, thanks.

4 Now, subsequently, I was in a meeting  
5 where Dave Adams said if -- if they have no more  
6 loyalty than that, then get them out of here. And  
7 they let them all pretty much go.

8 Q. Okay.

9 A. And those were the questions -- that's  
10 all I can remember asking Rick at that time about  
11 the transition.

12 Q. Okay. What about Jerry?

13 A. Jerry was mostly a retirement thing.  
14 He was under the same understanding and -- and --  
15 Hassan, I don't remember. I don't remember. I  
16 remember talking to him, but I don't remember  
17 exactly what it was about.

18 Q. Let's back up to Jerry for a second.  
19 Jerry has since retired from Ford, hasn't he?

20 A. Yes, he has.

21 Q. To your knowledge, Jerry has not been  
22 rehired by ZF Batavia as an employee, has he?

23 A. No. Now, if I could say something  
24 else about that --

1 Q. Okay.

2 A. Jerry, at the time I was contacting  
3 NESC, was waiting to see what was going to happen.  
4 Now, when I went back to him and said, Well, they  
5 called me in a meeting and said they're not going  
6 to let me do this because I'm a transition  
7 employee, then Jerry said, Okay. And then a short  
8 while after that, he did retire.

9 Q. Jerry hasn't filed suit over that, has  
10 he?

11 A. No, I don't think so.

12 Q. And he would be a Ford transitional?

13 A. Yes, he was.

14 Q. Okay. And aside from the retirement  
15 with Jerry, that's the only discussion that you can  
16 recall?

17 A. That I can recall. I think we talked  
18 about the engineers also because that was important  
19 with -- with Jerry, too. Jerry ended up being the  
20 afternoon shift leader, production leader.

21 Q. Okay. I think you said Hassan,  
22 nothing particular comes to mind?

23 A. No. Hassan talks about everything.  
24 Everything Hassan says kind of runs together

1 because he talks a lot.

2 Q. Anybody else that you remember any  
3 specific discussions about what you thought the  
4 move to the joint venture held, in terms of  
5 representations to you or that you relied?

6 A. No. I -- I remember leaving -- when I  
7 was leaving one day, Mike Warden was outside. He  
8 used to smoke at the same spot every day on the  
9 east side of the salary lot.

10 As I was leaving, he was standing out  
11 there and I knew Mike a little bit. And I asked  
12 Mike at one point if -- if he thought I'd be able  
13 to go to Sharonville. He said, No, I don't think  
14 so. There's no opening there or -- you know, can I  
15 stay -- can I stay here, just remain Ford and stay  
16 in this building. My dad worked here 35 years.  
17 When he retired, I was in here 26 and a half. I  
18 kind of bleed Ford blue. And he laughed and said,  
19 You know, I don't think that can happen, either.  
20 So okay.

21 Q. Do you remember approximately when  
22 that discussion was?

23 A. No, that would have been around  
24 probably the March, April frame of '99 --

1 Q. Okay.

2 A. -- because I can't remember the exact  
3 date that I hired with ZF on, but I'm thinking the  
4 beginning of September or October. I think mine  
5 was delayed a month because I had knee replacement  
6 surgery.

7 Q. Now, if you had stayed with Ford, to  
8 your knowledge, would you have been able to retire  
9 from Ford and hire back in, right back in with Ford  
10 at Batavia, for example?

11 A. No, I wouldn't have had any knowledge  
12 of that.

13 Q. You couldn't do it, could you, to the  
14 best of your knowledge?

15 A. Could I retire from Ford and hire back  
16 with ZF?

17 Q. No, no. Hire back with Ford.

18 MR. SIMON: Objection, asked and  
19 answered. He said he didn't know. Go ahead.

20 A. I don't know that. Ford does hire  
21 back retirees, but I don't know what the situation  
22 would be. I have no clue -- you know, what that  
23 situation is over there right now, or any other  
24 Ford location, for that matter.

1           Q.     Okay. In making your decision to come  
2     to the joint venture, were there any -- was there  
3     anything else that you relied on to -- to help you  
4     make that decision?

5           A.     Probably the biggest -- I mean, I --  
6     and it may sound a little soapy, but I wanted ZF --  
7     I wanted to help ZF. When we first talked about  
8     the transitioning, there was a lot of -- and I  
9     believe that's why the Ford people came down. Gee,  
10    we have ZF here with -- with tremendous engineering  
11    knowledge. We have Ford with mass production. You  
12    have a ton of experience in production.

13                You know, we really need some people  
14    to stay here and try to help this go and give them  
15    some help and experience and all that. And -- and  
16    I remember at that time saying, Well, I just bought  
17    a farm 50 miles east of this building. I would  
18    really like to stay in the area. Can I stay here  
19    as Ford? I'll stay here as long as you want. No,  
20    you can't do that.

21                But then subsequently, quite a few  
22    people did and there's -- there's still one or two  
23    there. And then I said, if I can't do that, can  
24    I go to Sharonville and remain Ford? No, there's

1 no openings there. You can't do that.

2 Well, then, you have to make a  
3 decision. And I weighed all that and I felt like  
4 it was the right thing to do. And so then I agreed  
5 to transition to ZF.

6 Q. Okay. And it sounds like you relayed  
7 a bit of a discussion to me. And I think we've  
8 talked already about all the discussions that you  
9 had. Was there anything else that you relied upon,  
10 then, in making a decision to join the joint  
11 venture?

12 A. No.

13 Q. Okay.

14 A. Not that I can recall. I don't think  
15 so.

16 Q. Okay.

17 A. Maybe something will come to mind,  
18 but --

19 Q. All right. When you were turned down  
20 to take the retirement from Ford and rehire at  
21 Batavia, did you go ask Rick Williams for help with  
22 that issue?

23 A. When I was turned down? Ask the  
24 question again, please.

1 Q. Sure. Earlier this year, late last  
2 year, you made the request to retire from Ford and  
3 basically rehire at your same job at Batavia. Do  
4 you remember that?

5 A. Yes, I do.

6 Q. Help me with the timing. Was that  
7 late last year or early this year? I just don't  
8 remember off the top of my head.

9 A. I believe it was early this year  
10 because I remember calling -- it was early this  
11 year because I remember -- I remember sending an  
12 e-mail to Herb saying that when I come back from  
13 Christmas break, I am going to contact NESC because  
14 you have to wait a certain time period. April 1st  
15 was the date that I was eligible to do that.

16 Q. Okay.

17 A. Now -- no. At that point, I did  
18 not -- I hadn't talked to Rick. I had a meeting  
19 then and all that was -- looked good and -- and the  
20 e-mails I had with Len, he said, Looks good. I  
21 think this will happen. I think this is okay. And  
22 I said, Okay, great.

23 At that time, then -- then I had a  
24 meeting I was called into with Len and Herb where

1 Len said, we had a meeting today and I've got bad  
2 news for you. And I said, Well, now is the time to  
3 give it to me 'cause Dick just told me he's sending  
4 me back to the floor. He said, Well, we decided  
5 we're not going to let you do that. And I said,  
6 What do you mean you're not going to let me do  
7 that? And he said, Well, you can still retire with  
8 your 30 and out Ford retirement, but we -- we won't  
9 hire you back with ZF.

10 I said, Why? You told me -- I was  
11 told I could do this. And he said, Well, because  
12 you're a transition employee. If we allow you to  
13 do that, then that will open the flood gates for  
14 all the other ones.

15 I said, But that's something we were  
16 all told we could do, Len. But he said, No, you  
17 can't. Now, you have talked to me about becoming a  
18 contract person like Jerry. And I said, No, no,  
19 no, I'm not doing that. Now, subsequently, then I  
20 went to Rick Williams --

21 Q. Okay.

22 A. -- yes. And I mentioned that to him  
23 because -- and then I went to Jerry Priest and I  
24 mentioned that to him. The people I knew that had

1 an interest in that that really were kind of  
2 waiting to see what happened.

3 Q. Well, why didn't you go to Rick to  
4 kind of fix the problem for you? Is it because you  
5 knew he didn't have the authority to do that?

6 A. That's not why I didn't go to him. I  
7 just didn't go to him because during everything  
8 that was going on, that really wasn't his business.  
9 It wasn't. He was a quality director. I tried to  
10 do everything with Sarah Orwig and Karen Taylor and  
11 Len.

12 Q. Okay.

13 A. Then I told Rick about that. And that  
14 was all -- all that we really talked about there.  
15 After the meeting with Dave Adams, he went to Rick  
16 and said, What's up with this? You know, why is  
17 Rick upset? And he said, Well -- and that was one  
18 of the things he mentioned.

19 And Dave Adams then told Rick  
20 Williams, Well, then make it right. If we told him  
21 that, make it right. Go to the policy committee  
22 and make it right, which Rick went to Karl Kehr.  
23 And I think Karl did get hold of Ford, and at that  
24 point, Ford said, Well, wait a minute. Time out.

1     There's a same desk policy and -- you know, then  
2     that stopped it dead.

3             Q.     Okay. To your way of thinking, if you  
4     know, is it ZF Batavia that told you no or Ford  
5     that told you no as to this issue, if you know?

6             A.     Well, I can't -- I can't know for  
7     sure, but, to me, having just talked to HR and Ford  
8     and NESC and they say, yes, you can. Talking to  
9     Len and him saying, yes, you can. Dave telling  
10    Rick have the policy committee make it right. All  
11    that seemed to be ZF was okay with it because, as  
12    they said, this is your business with Ford.

13            A lot of other people had done it,  
14    Ford people. Subsequently I found out that they  
15    had an amendment written that they didn't write for  
16    us, but we weren't told that during transition  
17    time. We were just told we could do the same thing  
18    when we got 30 years combined service.

19            Now, when Ford -- and I got that  
20    e-mail back from Karl, I think through Dave or Len,  
21    saying -- you know, here's what Ford -- Ford  
22    policy. Legal says you can't do it because of  
23    this.

24            Q.     Okay. And when you talk about the

1 retirement and what you were told, if I understand  
2 your testimony right, it isn't what you were told  
3 necessarily at the group meeting. It's what you  
4 were told by Rick Williams and Jerry Priest?

5 A. And the questions that were asked in  
6 the -- in the -- in those meetings.

7 Q. Okay. Do you remember -- but you  
8 think you told me you don't remember any specific  
9 quotes or comments --

10 A. No, I don't.

11 Q. -- from those meetings?

12 A. No, I do not.

13 Q. All right. Somehow, awhile ago, I  
14 thought we were talking about overtime and maybe we  
15 weren't. What representation do you think was made  
16 to you or representations regarding the payment of  
17 overtime?

18 A. Well, just what I was told, and that  
19 is your pay structure won't change, as far as  
20 overtime. If you're being paid overtime now,  
21 you'll continue to be paid overtime. We're going  
22 to try to mirror the Ford policies. And -- and I  
23 was paid overtime for -- for a period of time. And  
24 so -- you know, they changed their mind.

1 Q. All right. Let's -- little more  
2 detail in there for me. In terms of the comments  
3 about the Ford structure and pay you overtime if  
4 you're paid now, was that the May meeting or was  
5 that something from Jerry and Rick Williams?

6 A. That was -- that was one of the  
7 questions that was asked at one of these meetings  
8 in the informational -- half the room -- everyone  
9 was asking questions --

10 Q. Okay.

11 A. -- 'cause several people asked that  
12 question.

13 Q. Now, within Ford -- and you were there  
14 for 26 and a half years or so, does everybody get  
15 overtime?

16 A. I don't know at what -- I know that  
17 that levels nine and 10, which were superintendents  
18 for Ford, were paid overtime. And that's what I --  
19 that's the level I was when I -- I was -- I was an  
20 MPS, which is comparable to an LPM when I  
21 transitioned --

22 Q. Okay.

23 A. -- became a superintendent-like level.  
24 And we were called superintendents at the outset.

1 So, yes --

2 Q. Okay. Well --

3 A. -- it was my understanding then that I  
4 would.

5 Q. You would, but what I had asked you,  
6 does everybody at Ford, salary, salary exempt,  
7 whatever, get paid for overtime?

8 A. I think there's a level and I'm not  
9 sure what that level is that they don't.

10 Q. And the Ford policies regarding  
11 overtime in the years that you were at Ford changed  
12 from time to time?

13 A. The only way that I can remember it  
14 changing, it might have been early nineties when  
15 things were slow. And they did go to the buildings  
16 and said, We need to try to cut back on overtime  
17 payments.

18 So we're going to substitute a -- comp  
19 days, compensatory. So instead of if you work  
20 eight hours of overtime, we'll give you a day off.  
21 I remember that. That was adjusting it, but  
22 that's -- that's the only time I can remember.

23 Q. Okay. So when you say that it was  
24 going to follow the Ford structure, did that -- I

1 guess, what did that mean to you?

2 A. Okay. To me, that meant if you are  
3 required to work overtime, that you be paid for it,  
4 it would have to be approved --

5 Q. Okay.

6 A. -- which it always was.

7 Q. Okay. Ford had the notion of casual  
8 time though, didn't it?

9 A. Ford had the notion of casual time.  
10 See, we -- casual time with Ford was -- and I don't  
11 know that I ever saw that in writing, but it was  
12 pretty much understood if you were in production,  
13 manufacturing, that you needed to get to work a  
14 half hour ahead of time.

15 Q. Okay.

16 A. You needed to hang around a half hour  
17 after work, just to shake hands, so-to-speak, with  
18 the other shift and line them up.

19 Now, that half hour -- that hour was  
20 sometimes paid, sometimes not. If you worked 10  
21 hours, then you were paid all of it. If you  
22 worked -- if you worked nine hours, you were paid  
23 nine hours. If it was less than nine hours, no.  
24 It was casual, true casual. But if it was nine

1 hours, you were paid nine hours. And if it was --

2 Q. I think the example that Mr. Whisman  
3 used yesterday was 59 minutes. Well, that would  
4 have not been paid.

5 A. Correct.

6 Q. Okay.

7 A. However, 61 minutes would have been  
8 1.1.

9 Q. And I understand that was his  
10 testimony, as I recall, something along those  
11 lines. With respect to ZF Batavia, is your  
12 testimony that the ZF Batavia overtime policy,  
13 then, differs from Ford?

14 A. Does it differ? If it's -- if it's  
15 paid, if they -- if they allow it, yes, it's the  
16 same.

17 MR. SIMON: You might have to clarify.  
18 What do you mean by "differ"? I think he's  
19 struggling with --

20 THE WITNESS: Yeah, I'm not sure what  
21 you mean.

22 Q. Well, what's different about the ZF  
23 Batavia policy versus the Ford policy, if there's  
24 any difference?

1           A.     ZF pays overtime.

2           Q.     Okay.

3           A.     They pay it at a different rate than  
4     Ford did and I'm not sure what the Ford rate is  
5     now.

6           Q.     Then how do you know it's different?

7           A.     Well, with Ford, it was time and a  
8     half. With ZF, there's a certain dollar figure on  
9     regular overtime and then another dollar figure for  
10    Sunday work or holiday work.

11                   And I know that's different. I'm not  
12    sure how different, and maybe Ford has changed that  
13    in the last four and a half years. But we still go  
14    through the procedure of getting it approved and  
15    we're still paid overtime. The difference would be  
16    the -- who qualifies for that overtime.

17                   Where ZF -- with Ford, superintendent  
18    level down, as far as I know, everyone was paid  
19    overtime. With ZF, they have differing --  
20    differing ways they paid people, who gets paid and  
21    who doesn't because I know people on the MR role  
22    that are BMs that get paid overtime. And I know  
23    BM's that do not get paid overtime. So they are --  
24    they're kind of selective on who they pay overtime.

1 Q. Does that selection depend upon the  
2 work that that BM is doing? If that business  
3 manager is covering for a group leader --

4 A. No.

5 Q. -- that person gets paid, don't they?

6 A. A BM -- there are some BMs that don't  
7 get paid any overtime.

8 Q. Okay.

9 A. And I can -- I can say Dan Sullivan,  
10 Eric Spencer. And then there are other BMs that do  
11 get paid overtime, whether they're covering  
12 somebody or not.

13 Q. Who would those folks be?

14 A. I know Keith Holmes would be one --

15 Q. Okay.

16 A. -- and Dennis Baker would be another.

17 Q. Well, now Dennis is a Ford  
18 transitional though, right?

19 A. Yes.

20 Q. Is Dan Sullivan a Ford transitional?

21 A. No.

22 Q. Any other differences in the overtime?

23 A. Not -- not that come to mind.

24 Q. Okay. You next told me that personal

1 days you felt was a representation that hasn't been  
2 followed through on?

3 A. Well, the personal days -- I mean,  
4 they were cut from -- from five to three and then  
5 they went back to five.

6 Q. Is it your recollection that you had  
7 five personal days at Ford?

8 A. I don't know that they were called  
9 "personal days." But, yes, we had -- we had five  
10 days, but I don't remember what they were called.  
11 I don't think they were sick days or anything  
12 'cause I -- I honestly, in all the years I worked  
13 there, I don't think I took any of them, so I  
14 don't --

15 Q. That was going to be my next question  
16 is, if I'm not mistaken, I think that the personal  
17 day issue went for about one calendar year  
18 approximately, in terms of the five to three, if  
19 you remember?

20 A. No, I don't remember.

21 Q. Okay. Do you remember wanting to or  
22 needing those personal days and not having them  
23 available to you?

24 A. No, I don't remember that being the

1 case.

2 Q. You didn't use -- did you use any of  
3 your personal days, do you know?

4 A. I think I used a couple of them.

5 Q. Okay. You also mentioned the  
6 opportunities with respect to CVT. What  
7 representations were made to you about that?

8 A. Okay. As part of the -- the meetings  
9 again and in talking to Rick Williams, my go-to  
10 person -- because I felt like, okay. This -- I  
11 think this is going to be exciting. I think ZF and  
12 this new venture and all of this is going to be  
13 exciting. This CVT transmission or CFT  
14 transmission is going to be the thing of the  
15 future. I really believe that -- I forgot what  
16 your question was.

17 Q. The representations that were made to  
18 you regarding CVT.

19 A. Okay. Getting in on the ground floor  
20 is an important thing. If I'm going to be CVT and  
21 at some point, Ford is going to be -- this  
22 transmission may not last. Who knows what the life  
23 of the transmission is going to be? It would be  
24 great to get in on the ground floor.

1                   And that didn't happen. I -- I don't  
2           think there have been -- this is an opinion. I  
3           don't think there have been any transition  
4           employees in CVT in manufacturing.

5                   I remember doing interviews with  
6           group -- potential group leaders where I -- I told  
7           them the same thing. If you come here, you're  
8           going to have the potential of getting in on the  
9           ground floor with CVT and they were excited about  
10          that. And some of those have definitely come back  
11          and said, Rick, you told me I had a chance and  
12          they -- they won't even consider me.

13                  So I thought that was something  
14          that -- that was -- that we were told we would have  
15          an opportunity for and I don't -- I just don't  
16          think we got that opportunity.

17                Q.     Okay. Would your preference today be  
18           in CVT, as opposed to your current position?

19                A.     I really can't answer that because  
20           only if I had a crystal ball here and could see  
21           what the future held for both organizations, to be  
22           honest with you. I wouldn't have a problem staying  
23           right where I am --

24                Q.     Okay.

1           A.     -- until such time as I desired to  
2     retire, if -- if the place -- if everything goes  
3     okay. And, yes, CVT would still be a viable option  
4     that -- you know, I still think if they work out  
5     the bugs that they have, that that would be an  
6     exciting thing. I haven't changed on that. I  
7     think that would be great.

8           Q.     Are your concerns related to the  
9     CFT26 --

10          A.     Yes.

11          Q.     -- and the issues with that program?

12          A.     Yes, it is.

13          Q.     And so to a certain extent, are you  
14     telling me you feel lucky not to be over in CVT?

15          A.     No, because those people are all still  
16     there. They're not -- they haven't released  
17     anybody and -- and the people I talked to, there  
18     aren't any plans to release anybody because they're  
19     still working on the other programs, the 30 and the  
20     23. And there's still a 30,000 a year volume on  
21     that.

22                     So they're using all those people.  
23     And they're still working on engineering issues and  
24     bugs on the lines and stuff like that. So I

1 haven't heard of any plans. So I don't know of any  
2 plans that they're going --

3 Q. Okay.

4 A. -- to reduce those people.

5 Q. With respect to -- you had mentioned  
6 representation by a committee, I think was the term  
7 you used. What is that?

8 A. Okay. And this I heard -- and it was  
9 either Dave Adams or Karl Kehr when they were  
10 talking. We talked about -- the question was  
11 asked, Well, who's going to -- now, if we  
12 transition from Ford and we leave Ford, who's going  
13 to look after our best interests? You know, here  
14 we're going to be in a -- in a company, ZF, as  
15 transition employees. If we have questions or  
16 concerns or if we don't think we're being treated  
17 fairly, and they said, there's going to be a  
18 committee formed to look after your best interests.

19 And to my knowledge, that -- that  
20 never happened. I never saw any communications  
21 where they had a committee or -- or anything like  
22 that. I know there's a board of directors, I  
23 guess, that have Ford and ZF on -- on that, but  
24 that's more of a plant-wide level.

1 Q. Okay. And this question and answer,  
2 was it that May 27th meeting?

3 A. Or the other one. There was another  
4 meeting and -- I can't remember. I can't remember  
5 the date on that. Another meeting up front.

6 Q. When you say "up front" --

7 A. In the cafeteria.

8 Q. Oh, okay. You mentioned, for example,  
9 that the opportunity to be in CVT was important to  
10 you to make your decision. But if I understand  
11 your testimony, you really made the decision  
12 because you felt you had no where else to go,  
13 didn't you?

14 A. Yes, I did.

15 Q. Okay.

16 A. Back when I made that decision,  
17 because of the length of time I had with Ford, I  
18 would have stayed with Ford. I really would have  
19 stayed with Ford. Once that became what looked  
20 like an impossibility, then I looked at ZF and --  
21 and I remember telling Dave Adams -- 'cause he  
22 asked me if I had decided.

23 And I said, Dave, if you're not going  
24 to let me go back to Ford, then, yeah. I -- I --

1     this is okay. And I'll give you my -- I'll give  
2     you a hundred percent 'cause I -- this is -- this  
3     is exciting. It is exciting. And it's not  
4     discounting that ZF was an exciting thing and that  
5     this was an exciting venture.

6                     You know, because on one hand, you've  
7     got some tenure with -- with a company, a big  
8     company and then this is a fledgling company that  
9     hopes to make it and they're really going to try.  
10    So there's a lot of excitement with that.

11            Q.     Okay.

12            A.     So even though, yes, I guess I -- I --  
13    that's why I still wanted ZF to do well and I  
14    wanted to do very well today. I have a son that  
15    works there hourly and I want them to do well.

16            Q.     And I understand that. But in terms  
17    of what made your decision for you, from what  
18    you're telling me, it was -- what I perceive is,  
19    anyhow, that you really didn't perceive that you  
20    had an opportunity to stay with Ford, at -- at  
21    least in Sharonville or Batavia?

22            A.     I asked the --

23                     MR. SIMON: Note my objection.

24                     MR. HUNTER: Okay.

1                   MR. SIMON: He -- the witness has  
2 testified to a number of things that factored into  
3 his decision, but go ahead and answer that  
4 question.

5                   A. Okay. That's what I was going to say.  
6 Yeah, those were two of the things 'cause I had  
7 asked about staying with Ford and I had asked about  
8 staying with Ford at Batavia or Sharonville. Those  
9 were options and those were questions that I had to  
10 ask.

11                   When you get the answers to those, you  
12 move on. And -- and once I had those answers, I  
13 moved on to, okay, then what's going on at ZF?  
14 What's the future going to be? What products?  
15 What do you envision those to be? How successful?  
16 What's going to happen with this building? How  
17 many are we talking about making and will I have an  
18 opportunity to get in on the ground floor of that?  
19 Those -- those kind of lead into the other -- the  
20 other things.

21                   Q. Okay. Do you remember off the top of  
22 your head approximately when you agreed to sign on  
23 with Batavia?

24                   A. Not off the top of my head.

1 Q. Was it after the May 27th meeting?

2 MR. SIMON: Objection, asked and  
3 answered. You can answer again.

4 THE WITNESS: I'm sorry?

5 MR. SIMON: You can answer again. Go  
6 ahead and answer.

7 A. I think it was after the 27th meeting.  
8 That would -- I think, off the top of my head.

9 Q. Okay.

10 A. But it was close to that time period  
11 because in June is when I actually went on medical  
12 and had my knee replaced.

13 MR. SIMON: Off the record.

14 (Off-the-record discussion.)

15 Q. Mr. Ervin, you've been handed Exhibit  
16 84. Have you ever seen that document before?

17 A. Yes, I have.

18 Q. Can you tell me what that document is?

19 A. It's an offer for employment with ZF.

20 Q. It's your offer, wasn't it, that you  
21 received?

22 A. Yes.

23 Q. Do you remember having seen this  
24 document? Do you know approximately when you might

1 have received that?

2 A. It would have been sometime in May.

3 Well, the date's the 17th of May and I signed it on  
4 the 7th of June. So sometime in that time period.

5 Q. Okay. With respect to this document,  
6 do you remember reading the document?

7 A. Yes.

8 Q. Okay. And certainly, then, you read  
9 it before you signed it?

10 A. Yes.

11 Q. Okay. The -- were there any  
12 additional documents given to you at the same time  
13 you received Exhibit 84?

14 A. At the same time?

15 Q. Mm-hmm.

16 A. I don't remember that.

17 Q. Okay. Do you remember, did Glenn  
18 Marinetti give you this document or somebody else?

19 A. I believe, the best of my  
20 recollection, Rick Williams gave me this. Glenn  
21 Marinetti was his boss.

22 Q. Okay. Did Rick say anything to you at  
23 the time that you recall that he gave you this?

24 A. No, I don't recall.

1 Q. Do you remember, did you sign it right  
2 then and there or how soon after you received it  
3 did you sign it?

4 A. I don't remember that, either.

5 Q. Okay.

6 A. Would think I wouldn't have signed it  
7 right then and there. I would have looked it over  
8 and thought about it, but I can't say that for  
9 sure.

10 Q. Now, I see a notation on the bottom  
11 right of Exhibit 84, will start September 1, '99  
12 and I think that's Mike Warden's signature?

13 A. Looks like it.

14 Q. And you made a reference -- you  
15 apparently had knee surgery or something?

16 A. Yeah.

17 Q. Okay.

18 A. That's why they put that on there,  
19 that I started a month or so later than most people  
20 that -- that did accept.

21 Q. Rick, we've handed you Exhibit 85.  
22 Does that one look familiar?

23 A. Yes.

24 Q. Okay. Is that your application for

1 employment at Batavia, at ZF Batavia?

2 A. Yes, I think so.

3 Q. Well, take a minute and review it, in  
4 case you're unsure.

5 A. No, I'm sure.

6 Q. Okay.

7 MR. SIMON: Take as much time as you  
8 need, Rick, to review the documents he gives you.

9 THE WITNESS: Okay.

10 A. Okay.

11 Q. All right. You've had a chance to  
12 review Exhibit 85?

13 A. Yes.

14 Q. On the second page of Exhibit 85, it  
15 appears that that would be your signature in there  
16 in three different places?

17 A. Yes, it is.

18 Q. Okay. And just as with the hire  
19 letter, I trust you read this before you signed it?

20 A. I can't remember reading it, but I  
21 signed it. I mean, that's --

22 Q. Is it your practice to sign things  
23 without reading them?

24 A. Probably -- probably only when I'm

1 being given a job and if I don't sign it, I won't  
2 get that job, that could be. No, I think I  
3 probably glanced over it, yes.

4 Q. Okay. I'm not trying to trick you or  
5 anything.

6 A. I -- I -- you know, and I'm trying to  
7 be honest with you here. You know, I see this and  
8 I can't remember sitting down and reading every one  
9 of these words.

10 Q. Okay. Is it safe to say that in  
11 either one of these documents, there is nothing in  
12 these documents regarding any of the  
13 representations that we've talked about with  
14 respect to retirement or overtime or the committee  
15 or bereavement days?

16 A. You mean, is it mentioned in those?

17 Q. Yeah, with respect to Exhibits 84 and  
18 85 --

19 A. Okay.

20 Q. -- your offer letter that you signed  
21 and your application that you signed --

22 A. Okay.

23 Q. -- is there anything in either one of  
24 those documents about those items, the retirement,

1 the overtime, the committee?

2 A. Well, let me look at it again.

3 Q. Okay.

4 A. No, there's nothing mentioned in -- in  
5 either of those about that.

6 Q. Okay. In -- in this litigation, you  
7 answered certain interrogatories, questions that  
8 were given to you by Ford Motor Company. Do you  
9 remember that?

10 A. In -- in what now?

11 Q. Relative to this litigation --

12 A. Oh, yes, yes. Now I know, yes, this.

13 Q. Lawyers use the word  
14 "interrogatories." Most people would call them  
15 questions. Does that sound familiar with you?

16 MR. SIMON: Are you done with 84 and  
17 85?

18 MR. HUNTER: For the time being, yes.  
19 You can set those off to the side.

20 Q. When you responded to those  
21 interrogatories, you indicated that you had a loss  
22 of \$29,560. Does that sound familiar?

23 A. Yes, it does.

24 Q. All right. Can you tell me what that

1 number represents?

2 MR. SIMON: Just note my objection.

3 You misstated what it says in the interrogatory,

4 but --

5 MR HUNTER: Well, I'm sorry. Let's

6 correct the issue.

7 MR. SIMON: He answered -- he gave

8 that estimate regarding his overtime loss.

9 BY MR. HUNTER:

10 Q. All right. Let's go right to the  
11 document. Now, do you see on page 6 of your  
12 answers to interrogatories, a sentence that reads,  
13 At this time, plaintiff estimates a loss of  
14 \$29,560. You see that sentence?

15 A. Yes, I do.

16 Q. Okay. What does that \$29,560, what is  
17 that number comprised of?

18 A. That number is comprised of overtime  
19 that I was not paid -- that I worked that I was not  
20 paid for.

21 Q. Okay. Is there anything else that  
22 that number is comprised of?

23 A. Not that I know of. I think it was  
24 strictly overtime that I did not get paid for.

1 Q. Okay. Now let's talk about that  
2 overtime. From when to when?

3 A. Okay. 2001 was an estimate and that  
4 was based on working nine hour days, a conservative  
5 estimate I should add. But 2002 -- let's see.  
6 Make sure I got this right. And -- no. 2000 was  
7 the first one. 2001 and two I had all my time  
8 statements for and those were when I was in  
9 production and when I was in Len's organization  
10 that I didn't get paid for overtime. When I was in  
11 Len's organization, I didn't get paid for any  
12 overtime and was mandated that I work at least 10  
13 every day.

14 Q. Your attorneys have supplied me with  
15 timecards --

16 A. Yes.

17 Q. -- for you. Are those the timecards  
18 to the extent you -- strike that.

19 The timecards you referenced for 2001  
20 and 2002, have those been provided to your  
21 attorney?

22 A. Yes.

23 Q. Okay. Do you recall how much you used  
24 as your estimate for 2000?

1 A. Now, this -- this would be a guess.

2 Q. Okay.

3 A. 2002 would have been about 400 hours;  
4 2001, 300 hours and 2000, maybe 200 hours, 150 to  
5 200, something like that. I don't know offhand  
6 exactly, though.

7 Q. Okay. I guess I want to clarify. I  
8 thought you told me 2000 was an estimate --

9 A. Yes.

10 Q. -- and that 2001 and 2002, actually  
11 kind of audited your timecards?

12 A. Right.

13 Q. Do you know, then, specifically what  
14 your claim is for 2001?

15 A. I don't have it in front of me. I do  
16 have it -- my lawyer has it.

17 Q. Okay. Is there a similar claim for  
18 2003?

19 A. No. Since I been in production now,  
20 when Keith asks me to work overtime, he pays me  
21 overtime, which isn't very much, not very often.  
22 But let me -- I said, You're going to have to tell  
23 me to do it and then he said, Okay.

24 Q. By his telling you to do it, that

1 would be scheduled, authorized --

2 A. Yes.

3 Q. -- overtime in your mind?

4 A. Yes. Well, and then he signs a sheet  
5 that I provide him, you know.

6 Q. Okay. There's been some testimony  
7 along the lines of that -- whether or not you get  
8 paid overtime may, in part, depend on who your  
9 manager is. Would you consider that a fair  
10 statement?

11 A. I can't talk for everybody. I mean,  
12 I've heard that. I've heard that. Just like Mark  
13 Calhoun, who just went to CVT. When he was working  
14 for Eric Spencer, who doesn't get paid overtime, he  
15 didn't get paid overtime. But then other managers,  
16 yes, the people below them do get paid overtime.

17 Q. If I'm not misunderstanding you, even  
18 in your case, Keith Holmes is paying you overtime.  
19 When, for example, you weren't paid in Len  
20 Sennish's group and you made a reference to  
21 somebody else's group where you weren't being paid  
22 overtime?

23 A. Right.

24 Q. So is it your opinion that it's a ZF

1 Batavia policy regarding overtime or, again, it's  
2 more of a manager's discretion issue, if you know?

3 A. Well, I'm trying to make sure that I  
4 answer it right. I think it's a manager discretion  
5 issue.

6 Q. Okay. And with respect to 2003,  
7 you're being paid the overtime to which you're  
8 entitled, at least through today's date?

9 A. Yes.

10 MR. HUNTER: You want to take a break?  
11 We've been at it an hour and a half.

12 THE WITNESS: It's up to you. I'm  
13 okay if you're okay.

14 MR. VANWAY: Yes.

15 (Off the record: 2:51 p.m. - 3:05 p.m.)

16 MR. SIMON: There was some testimony I  
17 wanted to clarify.

18 MR. HUNTER: Are we on the record?

19 MR. SIMON: Rick had made a comment  
20 about he had been told that the pay structure would  
21 stay the same. And I don't know that we ever got  
22 in context who said it or not. Perhaps it was on  
23 the record, but I kind of wanted Rick to clarify  
24 that.

1 MR HUNTER: Sure.

2 A. That was Rick Williams. After the  
3 meetings and we'd talked about it and he said that  
4 pay structure would be basically the same as it was  
5 when you were at Ford.

6 Q. To your way of thinking, Rick, what  
7 does "pay structure" mean?

8 A. Pay for overtime, bereavement days,  
9 vacation days, personal days, so those kind of  
10 things, pay structure.

11 Q. See, 'cause I look at pay structure,  
12 and I guess, to me, that would mean -- for example,  
13 Ford had grades and ZF Batavia has salary bands.  
14 So is that pay structure or a component of it or --

15 A. That's not what -- what I thought it  
16 to be.

17 Q. Okay. Well, okay. So you mentioned,  
18 I think, bereavement days, vacation days. Are you  
19 telling me -- is it your testimony now that ZF  
20 Batavia has not lived up to some representations or  
21 commitments with respect to those issues as well?

22 A. No, I didn't --

23 Q. Oh, okay.

24 A. I'm not saying that. I'm saying that

1 as part of the pay structure, that's what I would  
2 envision. And have they lived up to that, we've  
3 talked about the personal days from five to three.  
4 Bereavement, I -- I believe also changed. But  
5 those things haven't affected me particularly, or  
6 the vacation has not affected me in particular.  
7 I'm not sure about the vacation. I know there's  
8 people that negotiate that all the time.

9 Q. New hires negotiate that?

10 A. New hires negotiate the vacation.  
11 Others try and negotiate the vacation.

12 Q. I think Dennis Baker had said he's  
13 tried --

14 A. Yes.

15 Q. -- very hard to negotiate that, but to  
16 no avail?

17 A. Right.

18 Q. The -- okay. With respect to any  
19 losses that Rick Ervin has, I understand that of  
20 the 29,560. Are there any other monetary losses  
21 that you feel you have?

22 A. That's difficult to answer, just  
23 because I'm not sure how -- when Dick said, let's  
24 sit down and talk about Rick Ervin's AIP or

1 bonuses, how those are affected, how they base  
2 that. So I don't know that. Are they what they  
3 could have been, I don't know. So I'm not sure I  
4 can answer that, really.

5 As far as vacation though, that's --  
6 that's okay because I have the max because of the  
7 amount of time I have in. The overtime, we talked  
8 about. The retirement could -- I don't -- see, I  
9 don't know that there could be a value on that or  
10 not, I don't know. I don't even know if that's  
11 something that's -- it's an issue. It was a  
12 promise and that's why I -- that's why I brought it  
13 up. That's why it was important to me and others.  
14 It was in a promise that we were told we could do  
15 and others have gotten to do it.

16 Q. Well, okay. Let's talk about the  
17 component of it. You say that was a promise. It  
18 was a promise from who?

19 A. From -- and I'm going to say Ford and  
20 ZF jointly because it was -- it was brought up in  
21 the meetings.

22 Q. Well, wait a minute. I thought you  
23 told me Rick Williams is the one that told you you  
24 could make the jump?

1           A.     Yes.

2           Q.     Okay.

3           A.     It was brought up in the meetings  
4     and -- and also Rick Williams 'cause I talked to  
5     him, too, about some of the questions that I had,  
6     and that was one of them. And Jerry, I think I  
7     mentioned. He also talked about that because those  
8     were important issues, especially with people --  
9     people had different issues that were of different  
10    levels of importance for them, all of which were  
11    important, but -- and retirement was an issue we  
12    talked about.

13          Q.     Okay. So Rick Williams said that he  
14    promised that ZF Batavia would permit you to retire  
15    and rehire right in?

16          A.     We talked about the meetings, the  
17    meetings and the questions afterwards and the one  
18    about retirement and they said you would -- that  
19    when you retire, when you had your 30 years, you  
20    could -- you could retire and hire back with ZF.  
21    And that's a question that, yes, I asked Rick  
22    Williams and he confirmed that's his understanding  
23    also.

24          Q.     Okay. That's his understanding, not

1       that he committed to you that you could do that,  
2       but that was his understanding?

3           A.     Right, him being my boss and I went to  
4       him and asked him -- you know, Rick, what -- how do  
5       you see this? And he said, Well, that's my  
6       understanding. I believe that to be true also.  
7       And -- you know, he's gone to Dave Adams and said  
8       the same. I believe that was something that they  
9       told us we could do.

10          Q.     You've got Exhibit 2 in front of you  
11       there?

12          A.     Yes.

13          Q.     Okay. Have you ever seen that  
14       document before?

15          A.     Yes, I have.

16          Q.     Okay. Can you take a look at the --  
17       I'll call it the first page, but you understand  
18       this is a tri-fold --

19          A.     Yes, sir.

20          Q.     -- document? So what is the first  
21       page is not necessarily the first page?

22          A.     Yes, sir. I think this was the last  
23       page.

24          Q.     Okay. There you go. All right. And

1 up in the left-hand corner there, it says, Ford  
2 general plan retirement benefits.

3 A. Yes.

4 Q. Can you take a second to review that  
5 for me, Rick?

6 A. Okay.

7 Q. Okay. That language clearly does not  
8 mirror what you recited to me as being your  
9 understanding and Rick Williams' understanding with  
10 respect to retirement benefits, correct?

11 A. No, I believe it does.

12 Q. Okay.

13 A. I believe they -- they have two  
14 paragraphs and they separated the two.

15 Q. Okay.

16 A. And the second one says, Remain  
17 employed by ZF Batavia until your age and combined  
18 GRP and ZF retirement meet the -- the requirements.  
19 And then I think it says that you -- until you have  
20 separated employment from ZF Batavia. And that was  
21 the topic of conversation and something we talked  
22 about, the length of time separated from ZF  
23 Batavia.

24 Q. Where in there does it say that ZF

1 Batavia will rehire you if you retire from Ford?

2 A. Well, I don't see it specifically in  
3 there, but that was my understanding. That was my  
4 understanding from the meetings that we had and the  
5 conversations that we had, that that was something  
6 that they said we could do.

7 Q. Okay. And would you acknowledge that  
8 this, again, relates to the Ford general retirement  
9 plan, correct?

10 A. Yes.

11 Q. And that is a plan, sort of an ERISA  
12 type plan?

13 A. I'm not familiar with ERISA.

14 Q. Okay. Do you see on -- I'll call it  
15 the second page of Exhibit 2, on the right-hand  
16 side, down towards the bottom where it says, Plans  
17 described here are subject to change. Do you see  
18 that language?

19 A. I'm looking for it.

20 Q. Way down on the right-hand side.

21 A. Yes.

22 Q. Okay. And you would acknowledge that  
23 language was in this document as well at the time,  
24 it's all part of the same document?

1           A.     It's -- it's in that document, yes.

2           Q.     Okay.

3                   MR. SIMON:   John, is it the  
4   defendants' position that the plans' language  
5   refers to ERISA plans, does it?

6                   MR. HUNTER:   I'm sorry.   Was that an  
7   objection or --

8                   MR. SIMON:   Based on your question,  
9   that's what I thought that you were saying.

10                  MR. VANWAY:   That sounds more like an  
11   instruction to the witness.

12                  MR. SIMON:   He already answered the  
13   question.   It has --

14                  MR. HUNTER:   So then I would really  
15   appreciate if we could keep comments limited to  
16   objections.

17   BY MR. HUNTER:

18           Q.     All right.   Rick, how do you fill out  
19   a timecard or a time sheet, I guess, maybe is the  
20   better description?

21           A.     I have a pay sheet.   Everyone has a  
22   pay sheet.

23           Q.     Okay.

24           A.     Every day when I walk in the building,

1 I swipe my card in.

2 Q. Okay.

3 A. During that day or the next day, I  
4 fill in what time I started and what time I left.

5 Q. Okay. Do you swipe out every day?

6 A. Yes.

7 Q. Okay.

8 A. Now, there might be times when I --  
9 when I forget, yes --

10 Q. Sure.

11 A. -- but not very often, rarely.

12 Q. Okay. And in the time that you've  
13 been with ZF Batavia since September of 1999, have  
14 you ever had somebody come to you and say, Rick,  
15 we're going to reduce your salary because of some  
16 irregularity on your time sheets or anything like  
17 that?

18 A. I remember a communication, and I  
19 don't have the specifics, which said that we were  
20 required to swipe out --

21 Q. Okay.

22 A. -- as well as in. The hourly people  
23 only have to swipe in. We have to swipe out also.  
24 And then the rest of the question was, has anyone

1       ever said that I would be in trouble for that?

2           Q.     No.  Has anyone ever come to you and  
3       said, Hey, Rick.  We looked at your timecards and  
4       they don't seem right.  We're going to --

5           A.     No, sir.

6           Q.     -- dock your salary or anything like  
7       that?

8           A.     No, sir.

9           Q.     Let me help you, if I can.  You got  
10      16?

11                  MR. SIMON:  Yeah, go ahead and give it  
12      to him.  Oh, for him, right.

13          Q.     Okay.  Your counsel has been kind  
14      enough to hand you Exhibit 16.  Take a second or  
15      minute, however long you need to review that,  
16      please.  Some of us are speed readers.

17          A.     Okay.

18          Q.     Is Exhibit 16, is that the document  
19      you made reference to a couple minutes ago?

20          A.     It appears to be.

21          Q.     Okay.  And that's the notice that said  
22      you had to swipe in and swipe out?

23          A.     Yes.

24          Q.     Okay.

1           A.     I don't remember reading this  
2 document, but yes. In reading it, it says that.

3           Q.     Okay. And, again, with respect to the  
4 swipe in and swipe out, that's never been an issue  
5 for you, personally?

6           A.     No.

7           Q.     And nobody has ever come back to you  
8 again and said, jeez, Rick, we compared your  
9 timecards with the swipes and we have a problem?

10          A.     Not that I recall, no.

11          Q.     Okay. Are you aware of any employee  
12 in the plant -- any salaried employee in the plant  
13 where that has been an issue?

14          A.     No, not personally. I -- hearsay  
15 of -- of an employee.

16          Q.     One employee?

17          A.     Yes. That's all I heard about, and I  
18 don't even remember the name, no.

19          Q.     All right.

20          A.     Now, I have -- I have checked bad  
21 swipes myself for employees that work for me,  
22 contract employees.

23          Q.     And when you say a contract employee,  
24 you're talking a -- an employee -- an independent

1 contractor for ZF Batavia, not a --

2 A. Yes, that's correct.

3 Q. -- a salaried -- not somebody on ZF  
4 Batavia's payroll?

5 A. That's correct.

6 Q. Okay. You don't believe that ZF  
7 Batavia maintains a policy of deducting pay for  
8 alleged discrepancy, then, in time sheets?

9 A. I believe -- yes, I believe they  
10 definitely would.

11 Q. You're not aware of any instance where  
12 that's ever occurred?

13 A. No, but I believe they would. Just --  
14 just the fact that I don't have knowledge of that,  
15 I -- I believe that if I falsify my timecard, I  
16 would -- I would think, yes, they would -- they  
17 would do something about that.

18 Q. Well, why do you believe that?

19 A. Because they said they were going  
20 to -- that we had to swipe in and out and that they  
21 were going to audit those cards.

22 Q. To the best of your knowledge, do your  
23 time sheets always reflect -- well, strike that.

24 In terms of your time sheet, does it

1 reflect the minute you walk in the plant, the  
2 minute you start working or what time does that  
3 time sheet reflect?

4 A. It's pretty close to the minute I walk  
5 in the plant when I swipe the card.

6 Q. Okay. Certainly there are days where  
7 that time sheet's not going to be right to the  
8 minute with respect to the time -- the time noted  
9 on your time sheet will not be duplicated, in terms  
10 of the time on the Honeywell reader, correct?

11 A. That could happen.

12 Q. Okay. And you have never had your pay  
13 adjusted because of that, have you, because of that  
14 difference?

15 A. Not to my knowledge.

16 Q. But as we sit here today, are you  
17 saying that you believe you could or that the  
18 company even would?

19 A. Yes, I believe they would.

20 MR. HUNTER: And I apologize. I don't  
21 have copies. Let's go off the record for a second.

22 (Off the record: 3:22 p.m. - 3:24 p.m.)

23 Q. Rick, we've handed you what's been  
24 marked as Exhibit 86. Do you see that --

1 A. Yes, sir.

2 Q. -- document? Is that your time sheet?

3 A. Looks like my handwriting.

4 Q. Okay. For the -- for -- certainly not  
5 Mr. Sennish's signature, but the times that are in  
6 there --

7 A. Oh.

8 Q. -- appear to be your handwriting,  
9 correct?

10 A. Yes, they appear to be.

11 Q. Okay. And if I'm not mistaken, that  
12 would be for the time period for the week beginning  
13 February 1, 2002 and ending February 15th, 2002,  
14 correct?

15 A. Yes.

16 Q. And I've now handed you page -- or  
17 Exhibit 87.

18 MR. SIMON: Can I just stop you just  
19 for a second? Sorry about the question. I see the  
20 Bates number 4594. Are these the documents that  
21 were in the box from me yesterday?

22 MR. HUNTER: Yep.

23 MR. SIMON: Note my objection to  
24 asking this witness. I haven't had the opportunity

1 to go through that entire box yesterday or today,  
2 obviously. So with that objection, go ahead.

3 Q. With respect to Exhibit 87, you would  
4 acknowledge that that's a portion of a group card  
5 trail report?

6 A. Yes.

7 Q. Okay. And we can do this if we need  
8 to. I've given you one page out of that. I guess  
9 in all fairness -- counsel, leave it up to you. I  
10 have with me the entire report for Mr. Ervin. We  
11 can put that in as an exhibit and it is 59 pages,  
12 or I can show you that it came out of his group  
13 trail report.

14 MR. SIMON: Well, gee, represent the  
15 accounting -- what are the Bates stamped documents,  
16 the 59 pages you refer to?

17 MR. HUNTER: The -- Rick's group  
18 trail -- group card trail report and the documents  
19 that have been provided is 004585 through 004643.  
20 And as you can see, this is 4594.

21 MR. SIMON: Does 4585 have his name on  
22 it?

23 MR. HUNTER: Yes.

24 MR. SIMON: Make 4585 -- that's fine.

1 4585 reflects that it's his name. I reserve the  
2 right to disagree about whether it is, but if you  
3 say that's what it is, that's what it is.

4 MR. HUNTER: All right. Understood.

5 BY MR. HUNTER:

6 Q. Rick, for purposes of this line of  
7 questioning, I think there's an understanding that  
8 we've taken a page, Exhibit 87, out of your --  
9 basically a card report for your card swipes.

10 A. Okay.

11 Q. If I take a look at, for example, the  
12 entries on your time sheet now for February 4th, I  
13 see that you clocked in on the time sheet at 6:40,  
14 correct? And I'm talking right now on the time  
15 sheet, not the trail report.

16 A. Yes.

17 Q. Okay. And according to the time  
18 sheet, you left at -- what is that, 5:15, correct?

19 A. Yes.

20 Q. Now, if I look at the trail report, I  
21 see that you swiped into the building at 6:43 --

22 A. Yes.

23 Q. -- okay? And that you swiped out of  
24 the building at seven after five, correct?

1           A.     Six after five. Oh, seven after five,  
2     right. It's two different doors.

3           Q.     Okay. And I'm not here to pick nits,  
4     but it's -- it's a discrepancy, but you certainly  
5     were never taken to task by Batavia for that  
6     discrepancy, correct?

7           A.     That's correct.

8           Q.     And if we look at February 5th, a  
9     similar type of discrepancy, isn't it?

10          A.     Yes.

11          Q.     Okay. And Batavia has never come to  
12     you and said, Rick, we're going to dock you for  
13     this, have they?

14          A.     No.

15          Q.     Okay. Given your testimony before  
16     that you thought they would, how can you reconcile  
17     that with your own time records?

18          A.     Because these are a few minutes here  
19     or there and I think everyone, like I said, fill  
20     out their time sheets mainly the day after 'cause  
21     you don't walk back in and fill it out after you're  
22     leaving. So you're going by your best recollection  
23     and they're fairly close.

24                 But, however, I -- I believe that if I

1 had a pattern of -- of falsifying times on some of  
2 them that may not show here where I put down that I  
3 was here less time than I actually was or that I  
4 started and I actually started earlier than that,  
5 do I think they would do something? Yes, I still  
6 believe they would. And why I say that, I just --  
7 I guess, just -- I just -- because I don't trust  
8 them. I don't trust them at all.

9 Q. Not because you're aware they've ever  
10 done it to anybody else?

11 A. Only that -- I told you I heard about  
12 one person.

13 Q. Okay.

14 A. But have they ever done with me, no.  
15 No, sir, they haven't.

16 Q. I think before we got off on that  
17 tangent, we had -- let me make sure we covered  
18 everything. Is there any other monetary loss that  
19 you can tell me about that we haven't already  
20 discussed today?

21 MR. SIMON: Just note an objection.  
22 This might be a continuing objection in the  
23 depositions we had, the interrogatory answers  
24 provided as to specific damages, whether or not the

1 witness is going to remember everything he put in  
2 in the interrogatory answers, I don't know. But,  
3 Rick, you can go ahead and answer his question.

4 A. I don't remember. I mean, I don't.

5 MR. HUNTER: Okay. Because it is 3:30  
6 and I do want to give Mr. VanWay the opportunity to  
7 inquire, I'll take a break for right now.

8 (Off the record: 3:31 p.m. - 3:33 p.m.)

9 THE WITNESS: Jeff, I believe you're  
10 the only one I haven't met.

11 MR. VANWAY: You're right.

12 THE WITNESS: That's terrible today.  
13 It's nice to meet you.

14 MR. VANWAY: Mr. Ervin, thank you.  
15 I'm Jeff VanWay. I represent Ford. You're right.  
16 I don't think we've officially met, although we've  
17 been looking across the table at each other for  
18 awhile today.

19 I do represent Ford in this case. I  
20 have some questions for you today. Mr. Hunter has  
21 already touched on a lot of the subjects that I  
22 might have asked questions on, so hopefully that  
23 will speed up my examination and I won't take as  
24 much time.

1 I'll try not to repeat any questions  
2 that Mr. Hunter has asked, but if I do, bear with  
3 me. It's not intentional, and we do have somewhat  
4 different interests here.

5 EXAMINATION

6 BY MR. VANWAY:

7 Q. Now, I'm sorry. Tell me again your  
8 date of hire with Ford.

9 A. With Ford, 6/11/73.

10 Q. When you started, were you an hourly  
11 employee --

12 A. Yes, I was.

13 Q. -- with Ford? How long were you an  
14 hourly employee?

15 A. One and a half years.

16 Q. Okay. So '74 --

17 A. Till January of --

18 Q. -- '75?

19 A. Till January of '75.

20 Q. And then you became --

21 A. Salaried.

22 Q. -- a salary employee?

23 A. Yes, sir.

24 Q. And the rest of your time with Ford,

1     you were a salaried employee?

2             A.     Yes, sir.

3             Q.     Okay. Then you, I assume, clearly  
4     understood since you were both an hourly and a  
5     salaried employee, that Ford basically had two  
6     groups of employees, hourly and salaried?

7             A.     Yes.

8             Q.     And the hourly were represented by the  
9     UAW?

10            A.     Yes, sir.

11            Q.     And you were a member of the UAW when  
12    you were an --

13            A.     Yes, sir, I was.

14            Q.     -- hourly employee? And you had a  
15    labor contract that set forth the terms and  
16    conditions of your employment, your compensation  
17    benefits, et cetera, correct?

18            A.     Yes.

19            Q.     Now, when you became a salaried  
20    employee, you no longer had a contract that set  
21    forth the terms and conditions of your employment,  
22    did you?

23            A.     No, not a contract, a verbal -- an  
24    agreement. Yes, I had an agreement that I would

1 say would be a contract. When I hired in salary,  
2 they sat down and said, Rick, we will -- we'll pay  
3 you if you do this job and we'll provide benefits  
4 and -- and compensation and everything like that.

5 I would view that as a contract. I --  
6 I don't know that it's -- that it was written that  
7 way. It was a long time ago, but --

8 Q. Do you recall if there was anything in  
9 writing as to --

10 A. I don't recall.

11 Q. Okay. And do you recall who it is  
12 that made that verbal commitment to you back in  
13 1975 as to what your salary and your benefits were  
14 going to be?

15 A. I believe it was the HR manager at the  
16 time. Who his name was, the only name that comes  
17 to mind that far ago was a guy named Larry Long.

18 Q. But it was someone in HR?

19 A. Yes, sir.

20 Q. And normally that's who it would be  
21 that would tell you what your compensation and  
22 benefits would be --

23 A. Yes.

24 Q. -- would be HR, right?

1           A.     Yes, sir.

2           Q.     Now, is it your understanding that  
3     your compensation and benefits would be the same as  
4     long as you were with Ford? In other words, that  
5     it would never change during the 20-some odd years  
6     that you were a salaried employee?

7           A.     No, I expected it to change. I had  
8     hoped it would change.

9           Q.     And, in fact, it changed many times?

10          A.     Yes, yes, it did.

11          Q.     And it changed according to the  
12     company's discretion, correct? In other words, the  
13     company told you what your compensation and  
14     benefits were going to be, didn't they?

15          A.     Yes, they did.

16          Q.     They didn't come to you when they were  
17     going to make a change and get your approval to  
18     change your benefits, did they?

19          A.     No, but compensation, I guess, maybe  
20     you could say that I had a -- an active role in  
21     that through performance reviews and -- what do you  
22     call it? You know, your plan for the next -- next  
23     year and -- you know, your input into that and what  
24     you expected, if you expected to maintain those

1 goals.

2 Q. So essentially, in other words,  
3 your -- they rewarded you for your performance?

4 A. Yes.

5 Q. Okay. But they didn't, for example,  
6 come to you and say, We're only going to give you a  
7 three percent this year. Is that okay with you? I  
8 mean, they didn't get your approval for something  
9 like that, did they?

10 A. Well, I don't know if it was asking  
11 for approval. They always notified me. And then  
12 notifying me, I would -- would say they were  
13 looking for an input, a discussion about it. I  
14 don't think it was just a -- otherwise, they just  
15 would do it.

16 Q. They notified you of what their  
17 decision was?

18 A. Yes.

19 Q. And you had the ability to accept  
20 their decision or to leave, correct?

21 A. Argue the point and -- and maybe that  
22 would affect it because most of those things were  
23 individual. You didn't get a raise based on  
24 individuality. I mean, not everybody together, I

1 mean. Just the opposite. You got it on an  
2 individual basis.

3 Q. Okay.

4 A. So it wasn't -- you know, everyone is  
5 going to get a three-percent raise this year. It  
6 was, Rick, here's your performance review. Based  
7 on that, you'll either get a three percent or a  
8 four percent or a five percent. Is that what you  
9 mean?

10 Q. No. You've answered my question. I  
11 appreciate that. Let's talk things other than your  
12 pay.

13 For example, your -- your benefits,  
14 your health insurance, vacation, things of that  
15 nature. Those were generally, as you understood  
16 it, the same for all salaried employees, weren't  
17 they?

18 A. As I understood it, yes.

19 Q. And when the company was going to make  
20 a change, for example, to health insurance, they  
21 didn't come to get your approval before they'd do  
22 that?

23 A. No, they didn't come to get my  
24 approval. We had meetings where they informed us

1     what they were going to do -- or the way they might  
2     go, the path they would want to go. But they  
3     didn't change a whole lot over the time I'd been  
4     salary with Ford. Not a whole heck of a lot that  
5     you would recognize that way.

6             Q.     Okay. Well, we'll talk about some  
7     changes here -- here in a minute. Are you familiar  
8     with the concept of at-will employment? Have you  
9     ever heard of that before?

10            A.     Just recently.

11            Q.     As part of this lawsuit?

12            A.     No, before that with -- with -- I  
13     worked in Len's area. I heard of lot of those  
14     comments. And at will, the first I heard that was  
15     working for Len.

16            Q.     Okay. While you were a salaried  
17     employee at Ford, there were years, weren't there,  
18     that you didn't get a merit increase at all?

19            A.     There may have been. Do I remember  
20     those? No, not specifically 'cause Ford has  
21     been -- other than what I mentioned earlier, the  
22     early nineties is what comes to mind -- come to my  
23     mind. Generally they've done very well and  
24     there've been lots of opportunities for increases.

1 Q. Do you remember some lean years in the  
2 early eighties, perhaps '82 and '83 where merit  
3 increases weren't given?

4 A. I don't remember.

5 Q. Is it possible?

6 A. Yes, yes.

7 Q. Is it your understanding that the  
8 company decided not to give you a merit increase  
9 for whatever reason, that they had the ability to  
10 make that decision?

11 A. Yes.

12 Q. And you received profit sharing while  
13 you were a salaried employee?

14 A. Yes, I did.

15 Q. There were years, weren't there, that  
16 you didn't receive any profit sharing at all?

17 A. I can't remember. There might have  
18 been a couple. I don't remember many, if any.

19 Q. Okay. Early nineties, does that ring  
20 a bell as to --

21 A. That would have been the time frame.

22 Q. Okay. And I think you have Exhibit 4  
23 in front of you. If you could just take a moment  
24 and flip to page -- bear with me. I had this

1 marked earlier. It's Bates stamped page 18,  
2 towards the back. The chart that says, Ford  
3 historical profit sharing. Are we on the same  
4 page?

5 A. Yes, sir.

6 Q. Okay. If you look at the years '91,  
7 '92 and '93, this chart appears to indicate that  
8 the amount of profit sharing for those years was  
9 zero percent.

10 A. Yes.

11 Q. Does that refresh your memory as to  
12 whether there may have been some years where you  
13 didn't receive profit sharing?

14 A. I had said earlier that the early  
15 nineties would have been -- if it was, that's when  
16 it would have been. It looks like that's how it  
17 was.

18 Q. You understood while you were with  
19 Ford that there was no guarantee that you'd receive  
20 profit sharing?

21 A. Correct.

22 Q. All right. If the company was having  
23 a bad year, you might not get anything at all?

24 A. Yes.

1 Q. And the amount that you received was  
2 solely up to the company, right?

3 A. Yes.

4 Q. Okay. At some point while you were  
5 with Ford, did the company -- and by "the company,"  
6 I mean Ford. Did they change from a profit sharing  
7 to a performance bonus plan? Do you remember that?

8 A. No, I don't.

9 Q. Okay. During your employment with  
10 Ford, do you recall Ford ever changing the amount  
11 of your health insurance premiums, the amount you  
12 paid out of pocket yourself for your health  
13 insurance?

14 A. Yes.

15 Q. Typically they increased those  
16 premiums that you paid, right?

17 A. I don't remember them decreasing.

18 Q. Okay. Do you remember also them  
19 changing the co-pays that you would pay for certain  
20 doctor's visits, et cetera?

21 A. I remember that happening, yes, but I  
22 don't remember when.

23 Q. And typically those went up, not down,  
24 correct?

1 A. Yes.

2 Q. Okay. Do you also recall that they  
3 made certain changes as to what was covered under  
4 the health insurance plan?

5 A. Yes.

6 Q. And you don't dispute, do you, that  
7 the company had the right to make those various  
8 changes to the health insurance?

9 A. No, I don't. I don't dispute that,  
10 that they did. I -- I still think, like I said  
11 earlier, that they tried to communicate with the  
12 employees a lot during that time period on things  
13 because they -- the employees did have options. It  
14 wasn't just -- you know, you could go with John  
15 Hancock or you could do something different. I  
16 know at one point, we could do something besides  
17 John Hancock.

18 Q. Options in terms of which health  
19 insurance plan you --

20 A. Yes.

21 Q. -- chose? Okay. Do you recall there  
22 being a time, perhaps 1982 where, because of some  
23 lean times, the company canceled vacation days or a  
24 portion of vacation days?

1 A. No, I don't recall that.

2 Q. Is it possible that happened and you  
3 just don't recall?

4 A. It's possible.

5 Q. Do you recall, again in the early  
6 eighties, the company canceling a comp day?

7 A. I never received a comp day, but I --  
8 I -- as I mentioned earlier to John, there was a  
9 time when -- you know, it might have been that time  
10 period where, instead of getting paid for overtime,  
11 you received comp days instead.

12 And I know they -- that a lot of  
13 people did receive comp days, but I don't know that  
14 much about it. I never had -- had a comp day.

15 Q. When Ford made this change from paying  
16 overtime to giving comp days, did they come to  
17 salaried employees and get their approval before  
18 doing that?

19 A. Approval, I don't believe so. We  
20 discussed it, we talked about it in meetings.

21 Q. They communicated what their decision  
22 was?

23 A. And everyone had an opportunity to  
24 voice they liked that or they didn't like that.

1 And I'm not sure that made any difference, but I  
2 guess they did have the opportunity.

3 Q. Okay. Do you recall, sir, a time in  
4 the early eighties where overtime, but before the  
5 comp time provision was put in, that overtime pay  
6 was limited to straight time instead of time and a  
7 half?

8 A. No, I don't recall that.

9 Q. Now, I believe you testified earlier  
10 that one of the changes in the -- in the overtime  
11 from Ford to ZF was that when you were with Ford,  
12 it was always time and a half, whereas ZF has some  
13 flat rates for overtime; is that correct?

14 A. Yes, they did.

15 Q. At any time while you were with Ford,  
16 did Ford have flat rates for overtime?

17 A. I don't remember. I wouldn't have  
18 said that. I didn't remember that. I don't  
19 remember them ever having that.

20 Q. Okay. Can you turn back to Exhibit 4  
21 again? I believe it's Bates stamped page 6. Do  
22 you remember this page that's shown here as Bates  
23 stamped page 6? Do you remember that being  
24 displayed as a slide at the May 27th, '99 meeting?

1           A.     I don't remember it specifically, but  
2     it could have been 'cause we talked about those  
3     kind of things.

4           Q.     At the meeting, do you remember there  
5     being discussion of these overtime rates or of what  
6     ZF's overtime rates were?

7           A.     Yes.

8           Q.     Okay. And so you knew, didn't you, as  
9     of May 27th, '99, that ZF was going to pay flat  
10    rates for overtime, as opposed to time and a half  
11    for all overtime?

12          A.     It was something that was discussed.  
13    Did we know -- was it -- did they say this is how  
14    it's going to be? I don't remember them saying  
15    that. I remember them saying here's -- here's  
16    something that we're talking about doing.

17          Q.     Oh, okay.

18          A.     A lot of those slides said -- you  
19    know, we're not going to have lease cars in the  
20    future, things like that.

21          Q.     So you understood the slides that were  
22    being put up May 27th as things that might happen  
23    at ZF Batavia?

24          A.     Yes.

1 Q. But no one was saying that this was  
2 definite, that this is the way things were going to  
3 be at ZF Batavia?

4 A. See, I can't say that for sure because  
5 some of the things I understood them as, yes, this  
6 is how it's going to be and some of them they'd  
7 talk about it.

8 Q. Okay. Well, can you -- if you flip  
9 to -- I'm sorry. Tell me again, did you attend the  
10 a.m. or the p.m. meeting?

11 A. A.M.

12 Q. Okay. If you'd flip to Bates stamp  
13 page 1, and that appears to be the agenda for the  
14 May 27th meeting. As you look at that agenda, do  
15 you agree with me that those topics were discussed  
16 at the May 27th meeting?

17 A. I remember some of them, yes.

18 Q. Okay.

19 A. I can't say I remember all of them,  
20 but I remember some of them.

21 Q. Which ones do you remember being  
22 discussed?

23 A. The vehicle program, annual incentive  
24 plan, merit increase, the health. The Hartford,

1 I -- I remember them having someone -- I believe  
2 someone came in to talk about that. The flexible  
3 spending accounts, tuition reimbursement, 401K plan  
4 and retirement plan, which, as I recall, was mostly  
5 for the employees that were immediately eligible to  
6 retire.

7 Q. Which you were not, correct?

8 A. Correct.

9 Q. Now, as you look beside each of those  
10 various topics, there is a name listed, which I  
11 presume is the individual who is going to be the  
12 presenter for that particular topic. As you look  
13 at the agenda, do you have any reason to believe  
14 that the individuals who are listed as the speaker  
15 for each topic are -- are not, in fact, the people  
16 who spoke on those topics at the meeting on May  
17 27th?

18 A. I don't -- I don't remember.

19 Q. Okay. Of the various topics that you  
20 recalled being discussed at the May 27th meeting,  
21 are you able to narrow that list down, in terms of  
22 which ones you believe were being discussed, in  
23 terms of this might be what happens at ZF Batavia,  
24 as opposed to those that -- where it was said, this

1 is what it's going to be at ZF Batavia?

2 A. Okay. The vehicle program, I remember  
3 that as being something they talked about might  
4 happen because they were still looking into it and  
5 how they were going to handle that program. I  
6 don't remember that much about it then. It didn't  
7 apply to me.

8 The annual incentive plan, then they  
9 talked about a plan of how they were going to  
10 compensate, but I don't remember the specifics  
11 but --

12 Q. Do you remember what --

13 A. -- I believed -- I believed that was  
14 going to happen, yes.

15 Q. You believed that was a definite, as  
16 opposed to a maybe?

17 A. Yes.

18 Q. Okay.

19 A. And the same with the merit increase  
20 program. United Health Care, that that was going  
21 to be our provider. I thought that was a definite.  
22 And the dental with Unicare. I don't remember that  
23 much about the Hartford.

24 The flexible spending accounts, I

1       can't remember about those. Tuition reimbursement,  
2       I think that was -- I -- I don't think that that  
3       had been hammered out as a definite at that point  
4       'cause I was interested in that 'cause I was  
5       finishing up school.

6                       And the 401K plan, that was -- I  
7       believe that was going to happen, yet you had  
8       options with that. There was a lot of different  
9       ways you could -- what you could do with your 401K,  
10      different accounts and different things that you  
11      had to choose, and that's all.

12             Q.     What about retirement, do you remember  
13      that as being firmed up or is that still in the  
14      planning stage at the meeting?

15             A.     I don't remember.

16             Q.     Mr. Ervin, you've been handed what the  
17      court reporter has marked as Exhibit 88. I'll  
18      submit to you that this is a document Ford produced  
19      in this case. It was part of your personnel file  
20      from Ford Motor Company, part of your salary,  
21      personnel file. As you look at the bottom of that  
22      document, is that your signature there?

23             A.     Yes, it is.

24             Q.     Do you remember signing this document

1 when you became a salaried employee?

2 A. No, I do not.

3 Q. You don't have any reason to dispute  
4 that you did sign this document, though, do you?

5 A. No, I don't.

6 Q. Okay. If you look to the -- well,  
7 actually there are a couple of different documents  
8 that appear to have been photocopied onto here, but  
9 I want to focus on the part that says "Employment  
10 Agreement." And if you look under "Employment  
11 Agreement," there are various paragraphs.

12 If you look to the third paragraph  
13 there, could you take just a moment and read that  
14 paragraph to yourself and let me know when you've  
15 done so?

16 A. Okay.

17 Q. Now, if you look, it may be one long  
18 sentence here, but as you look to the second line  
19 there, I guess there's -- at the beginning of that  
20 sentence there are a few words in there and then a  
21 semi colon and then it says that my employment is  
22 subject to such rules, regulations and personnel  
23 practices and policies and changes therein as my  
24 employer may from time to time adopt. Is that

1 consistent with your understanding as to how your  
2 employment operated at Ford?

3 A. No. And I say that because I -- I  
4 can't recall any employee's salary just being --  
5 just terminated or their employment stopped because  
6 they -- they wanted to.

7 Q. Because who wanted to?

8 A. Ford.

9 Q. You don't recall anyone being  
10 terminated because the company wanted to terminate  
11 someone?

12 A. Well, not just -- without a reason.  
13 Without a definable, justifiable cause where --  
14 where they had a hearing and you sat down and went  
15 through that. And the way that I -- that I read  
16 that was they could -- subject could be terminated  
17 at any time without advance.

18 Q. And you didn't believe that's the way  
19 things were operating?

20 A. No, I don't. I didn't.

21 Q. If you focus on the sentence or the  
22 clause that I read --

23 A. Okay.

24 Q. -- which, if I could paraphrase it,

1       essentially says that Ford could make rules,  
2       regulations and policies and then make changes to  
3       those.

4                   Do you agree with me that Ford had the  
5       ability while you were a salaried employee to make  
6       policies and procedures and to change those  
7       policies and procedures?

8           A.     Yes.

9           Q.     And you would also agree that you were  
10       required to follow those policies and procedures?

11          A.     Yes, I was.

12          Q.     And, then, if you look to the third  
13       line towards the end of that line, there's a clause  
14       that says, and my compensation to such adjustments,  
15       as my employer from time to time determine. And I  
16       think this is consistent with your earlier  
17       testimony.

18                   It was your understanding that it  
19       was -- Ford had the right to determine what your  
20       compensation and your benefits were going to be,  
21       correct?

22          A.     Yes, they did, but we talked about it.  
23       I mean, compensation, I think I mentioned that it  
24       was something -- we had a performance review, and

1     you talk about it and that's how your compensation  
2     was determined, whether your raises or what the  
3     rates would be and percentages and things like  
4     that. But, yes, they had the --

5             Q.     And when --

6             A.     They ultimately did it, yes.

7             Q.     Okay. And with regard to  
8     compensation, I mean, Ford set up a compensation  
9     program that included performance reviews, correct?

10            A.     Yes, sir.

11            Q.     And Ford ranked you according to your  
12     performance, correct?

13            A.     Yes.

14            Q.     And then based on your performance,  
15     according to their rankings, Ford determined what  
16     your increase was going to be?

17            A.     They did. When you say "Ford," I  
18     guess that would -- that would include your boss.  
19     Yes, I guess that -- that would be something where  
20     it was discussed. Your -- your raise will be what  
21     percentage, and then that was divided, depending on  
22     an area and -- you know, but yes.

23            Q.     Okay.

24            Q.     Now, since the time that you left Ford

1 as a salaried employee, which was sometime in 1999,  
2 correct?

3 A. Yes.

4 Q. Are you aware that -- that Ford has  
5 made changes to the compensation and benefits of  
6 salaried employees that continued to work for Ford?

7 A. No.

8 MR. SIMON: Jeff, counselor, note my  
9 earlier objection at the last deposition. If there  
10 are documents that support these assertions you're  
11 making, then I think we were entitled to copies  
12 that support this.

13 Q. Are you aware, for instance, Mr.  
14 Ervin, that Ford no longer has a 401K match for its  
15 salaried employees?

16 A. No, I'm not.

17 Q. As a ZF employee, you still receive a  
18 401K match, don't you?

19 A. Yes, sir.

20 Q. Are you aware that Ford has stopped  
21 paying performance bonuses to salaried employees?

22 A. No.

23 Q. Or that performance bonuses have been  
24 in minimal amounts, such as \$100, are you aware of

1 that?

2 A. No.

3 Q. And you continue to receive  
4 performance or AIP bonuses at ZF, don't you?

5 A. Yes, I do, but other employees --  
6 \$100, it's probably comparable or -- or less.

7 Q. Have you ever received an AIP bonus at  
8 ZF that was as little --

9 A. No, I have not.

10 Q. -- as \$100?

11 A. No.

12 Q. Are you aware that Ford recently  
13 announced that it was going to be cutting salary-  
14 related costs by 10 percent?

15 A. I remember seeing something in the  
16 newspaper, but not specifically.

17 Q. Okay. Are you aware that there's --  
18 other than what you may have heard in Mr. Warden's  
19 deposition, if you were here today, that Ford is  
20 contemplating cutting or reducing salaried  
21 overtime?

22 A. No. I'm sorry. Did you say  
23 contemplating or they're -- they're doing it?

24 Q. Contemplating.

1 A. No, I haven't.

2 Q. Now, it's my understanding from your  
3 responses to Mr. Hunter's questions that you  
4 believe certain individuals made promises to you  
5 about what things would be like at ZF. Did I state  
6 that accurately?

7 A. Yes.

8 Q. I mean, do you believe that -- and  
9 we're talking about folks like Hassan, Jerry  
10 Priest, Rick Williams, right?

11 A. Yes.

12 Q. Okay. Do you believe that those were  
13 promises or do you believe that they were telling  
14 you what they thought things were going to be like  
15 at ZF Batavia?

16 A. I believe that those were things that  
17 they were told and when they -- I know that they  
18 were told that if you're going to transition over,  
19 then you need to get the people to work for you  
20 that you want.

21 So when Rick Williams came to me and  
22 talked to me about transitioning, he's the guy I  
23 dealt with and I asked questions about all those  
24 things. Why, I probably had an option to talk to

1 Mike and I -- and I said I talked to him a couple  
2 of times, but Rick is the guy that I went to about  
3 all those things.

4 Q. Now, at Ford while you were there, the  
5 people that were responsible for compensation and  
6 benefits, those were people in the human resources  
7 department, right?

8 A. Yes.

9 Q. Rick Williams wasn't in human  
10 resources, was he?

11 A. No, he was not.

12 Q. Hassan wasn't in human resources?

13 A. No.

14 Q. Jerry Priest is not in human  
15 resources?

16 A. No.

17 Q. Other than Mr. Williams, Hassan, Jerry  
18 Priest and I think you testified about one  
19 conversation with Mike Warden, did any other  
20 representatives of Ford make any promises to you  
21 about what things were going to be like at ZF?

22 A. In the meetings -- the meetings on the  
23 27th and there were other meetings. The promises  
24 that I'm talking about are what I mentioned earlier

1       that -- and the questions afterwards is when the  
2       people that were contemplating transitioning asked  
3       those questions, what about compensation and what  
4       about the vacation times, those kind of questions.

5                       And those were -- I think everyone  
6       took that as -- you know, these are -- these are  
7       the commitments they're giving us. This is -- this  
8       is a promise. They're telling us this is how it's  
9       going to be. We -- I know I did, and I believe a  
10      lot of other people took that as, yeah, that's --  
11      that's legit. I can -- I can count on that.

12             Q.     Who in those meetings, who --

13             A.     Karl Kehr, Dave Adams --

14             Q.     -- made those promises?

15             A.     -- were the ZF reps. And that -- that  
16      would probably be all that I can remember.

17             Q.     What do you specifically remember  
18      Mr. Kehr promising during those meetings?

19             A.     Karl said that -- that the  
20      compensation or that the pay structure wouldn't  
21      change, that it would pretty much be the same.

22             Q.     Now let me stop you for just a minute.

23             A.     Okay.

24             Q.     Did he say it wouldn't change or did

1 he say it would pretty much be the same?

2 A. I recall it being wouldn't change.

3 Q. Okay. Anything else that Mr. Kehr  
4 promised?

5 A. No, not that I can recall. I mean,  
6 Karl and Dave both, everything that they talked  
7 about was trying to entice the Ford people to  
8 transition to ZF. So I think everything they were  
9 saying was -- you know, good things. You know,  
10 this -- everything is going to be okay. Dave  
11 mentioned we're going to try to mirror what you're  
12 used to at Ford. We're going to try to mirror that  
13 with ZF.

14 Q. He said we'll try to mirror?

15 A. Yes.

16 Q. He didn't say will definitely mirror?

17 A. No, he did not.

18 Q. And when Mr. Kehr said the  
19 compensation and pay structure will not change, did  
20 he specifically say the overtime pay arrangements  
21 will not change?

22 A. He didn't specifically say that in a  
23 presentation. When people asked the question, how  
24 about our pay? And, yes, he did say in the

1 question period that your pay structure will  
2 basically stay the same. If you're getting paid  
3 overtime at Ford, you'll get -- you'll get paid  
4 overtime with ZF. If everything else, they're  
5 trying -- we're trying to do the same thing that  
6 Ford is doing.

7 Q. Did Mr. Kehr ever say to you things  
8 will never change at ZF?

9 A. No.

10 Q. They'll always be the same?

11 A. No.

12 Q. Never said anything --

13 A. No.

14 Q. And your understanding, at least with  
15 Ford, certainly was that things changed frequently?

16 A. No.

17 Q. Things changed. You understood --

18 A. I understand --

19 Q. -- at Ford, things changed?

20 A. Yeah, yeah. I - 'cause I remember  
21 saying for many, many years, things were very good.  
22 They didn't change. If they did change, they were  
23 for the better.

24 Q. But sometimes they were for the worst?

1 For example, they --

2 A. Occasionally --

3 Q. -- increased health insurance, et  
4 cetera?

5 A. -- yes, yes.

6 Q. And did you have that same expectation  
7 that at ZF, things might change for the worst as  
8 well?

9 A. With health insurance and things?

10 Q. With any -- with any benefits, things  
11 might change for the worse.

12 A. Yes.

13 Q. Okay. Now, you understood that when  
14 you accepted the offer from ZF, that you were going  
15 to be working for ZF and not Ford, correct?

16 A. Yes.

17 Q. And you understood that ZF Batavia  
18 would be responsible for your compensation and  
19 benefits and not Ford, correct?

20 A. I understood that Ford and ZF together  
21 were working on -- you know, there were -- it was a  
22 joint venture. But Ford was involved -- and it was  
23 my understanding and I'm not going to talk for  
24 anyone else, but that all -- a lot of the

1 decisions, the policies, everything that was  
2 involved with the transition, that Ford was a big  
3 part of that. They were 49 percent. They have a  
4 big say in everything that goes on right now. So  
5 even though, yes, I -- I agree. I work for ZF. ZF  
6 is -- is the person I work for. I think Ford has  
7 been a big part of that from the beginning and I  
8 think they still are.

9 Q. By virtue of the fact that they're 49  
10 percent interest holder in the joint venture,  
11 right?

12 A. Yes.

13 Q. And you understood that once you went  
14 to work for ZF Batavia, that you'd be subject to  
15 whatever policies and procedures they put in,  
16 right?

17 A. Yes.

18 Q. And you also understood, didn't you,  
19 when you accepted employment with ZF Batavia, that  
20 there were going to be differences between the  
21 benefits that ZF Batavia was going to offer and the  
22 benefits that you'd received at Ford?

23 A. I understood that there might be --  
24 might be differences, but I understood also that

1 they would be fairly close together. That's what  
2 mirrored would mean, that they would be comparable.

3 Q. You received a transition bonus when  
4 you accepted employment with ZF Batavia, didn't  
5 you?

6 A. Yes, I did.

7 Q. And that transition bonus was  
8 designed, wasn't it, to address differences between  
9 ZF's benefits and Ford's benefits?

10 A. Some of the benefits. I'm not sure  
11 what all that included. I know that took into  
12 account things like leased cars and some of the  
13 differences, yes.

14 Q. Were you ever told specifically what  
15 differences the transition bonus was designed to  
16 address?

17 A. Not that I recall.

18 Q. Do you still have Exhibit 85, which is  
19 your ZF Batavia application? If you would turn,  
20 Mr. Ervin, to the second page of that document.  
21 The second page of that document, the first place  
22 that your signature appears, do you see that?

23 A. Yes.

24 Q. And then there are three paragraphs

1 above that. Do you see where I'm at?

2 A. Yes.

3 Q. If you'd look to the middle paragraph  
4 and the second sentence there, it says, I  
5 understand my employment is not to be for any  
6 definite term, may be terminated at any time by  
7 either myself or my employer. Do you see where I'm  
8 at?

9 A. Yes.

10 Q. Would you read that whole sentence to  
11 yourself and let me know when you're done, sir?

12 A. Okay. The sentence, yes.

13 Q. Okay. Now, the last part of that  
14 sentence says, the only way any differing  
15 commitment regarding my employment may be made is  
16 by a written agreement signed by the director of  
17 human resources of the company.

18 The director of human resources is Len  
19 Sennish, right?

20 A. Yes.

21 Q. And do you have any written agreement  
22 with Len Sennish setting forth terms and conditions  
23 of your employment?

24 A. Written agreement, no. An --

1 Q. Okay.

2 A. -- understanding, yes. And that's  
3 what I mean by -- and the understanding being  
4 everybody has the understanding that I do the job  
5 that I'm supposed to do and ZF provides the  
6 benefits and compensation and things like that.  
7 That would be my understanding.

8 Q. Okay.

9 A. Not that Len can -- you know, at any  
10 time just say, Rick, I'm sorry, but you're gone  
11 today.

12 Q. Okay. But you do see in that  
13 paragraph where it says, my employment is not for  
14 any definite term and may be terminated at any time  
15 by either myself or my employer?

16 A. Yes, I do.

17 Q. Okay. You just don't believe it works  
18 that way?

19 A. No, I don't.

20 Q. Okay.

21 A. I would hope that it doesn't work that  
22 way anywhere.

23 Q. By the time you went to the May 27th,  
24 1999 meeting, had you already made up your mind

1       that you were going to accept employment with ZF  
2       Batavia?

3             A.     I can't remember.

4             Q.     Do you remember specifically when it  
5       is that you made up your mind that you were going  
6       to accept employment with ZF Batavia?

7             A.     I -- I believe it was in the late May,  
8       early June time frame. Yes, 'cause I had to make a  
9       decision before I went on medical.

10            Q.     Now, one of the things you testified  
11       about earlier was your belief that there had been a  
12       promise to you about your ability to retire and  
13       then be rehired by ZF. And I believe you testified  
14       that you had conversations with Mr. Priest and  
15       Mr. Williams about that?

16            A.     Yes.

17            Q.     Now, later when you made your decision  
18       that you wanted to retire, you contacted someone  
19       from the NESC, didn't you?

20            A.     Yes, sir.

21            Q.     And you contacted NESC because you  
22       understood those were the individuals responsible  
23       for the retirement plan, right?

24            A.     I contacted Sarah Orwig in HR at

1 Dearborn and she recommended that I contact -- she  
2 said, yes, I believe you should be able to do that,  
3 but you should contact NESC.

4 Q. Okay. But you understood that either  
5 HR or NESC were the folks that if you had  
6 retirement questions, those folks were who you  
7 directed your retirement questions to, correct?

8 A. No, that wouldn't be correct. They  
9 would be a part of the process, yes. But I also  
10 believe Len Sennish, being the HR rep there at ZF,  
11 would be a huge part of that process also.

12 Q. Okay. You didn't believe, though,  
13 that Mr. Williams, for example, was an expert in  
14 the retirement system, did you?

15 A. No, not an expert, just a resource.

16 Q. Okay. You didn't believe that Hassan  
17 was an expert in the retirement system, did you?

18 A. No.

19 Q. Or Mr. Priest?

20 A. No.

21 Q. And if you had specific questions  
22 about how the retirement system worked, you were  
23 going to direct those to HR, either at Ford or at  
24 ZF or to NESC, correct?

1 A. I did that.

2 Q. Okay. Now, at this May '99 meeting,  
3 was there any specific discussion there about your  
4 ability to retire from Ford after you had accepted  
5 employment with ZF and then get rehired by ZF?

6 A. Yes. This was one of the questions  
7 that was asked.

8 Q. What was the specific question that  
9 was asked?

10 A. Okay. We, as transition people, when  
11 we get 30 years combined service and we retire,  
12 start drawing our retirement benefits and then hire  
13 back with ZF, and they said, Yes. You'd be able to  
14 do that just like the Ford people who are going to  
15 be able to do that.

16 Q. Who said yes?

17 A. I can't remember. I don't remember,  
18 but it was directed at Karl Kehr. I don't know if  
19 he specifically answered the question or someone  
20 else that was in that group.

21 Q. And the ability to retire and then be  
22 rehired by ZF was important to you?

23 A. It was one of the things that was  
24 important to me, yes.

1 Q. If you had been told that you wouldn't  
2 be able to do that, would you have accepted the job  
3 with ZF Batavia?

4 A. Yes.

5 Q. You would have taken the job anyway?

6 A. Yes.

7 Q. Okay. So -- and I know you testified  
8 earlier that in your offer letter, which is Exhibit  
9 84, it doesn't say anything about retirement and  
10 rehire?

11 A. No.

12 Q. In fact, you never got that in  
13 writing, did you? Before you accepted employment  
14 with ZF Batavia, you never got that in writing, did  
15 you?

16 A. No.

17 Q. And it didn't concern you that you  
18 didn't have it in writing, did it?

19 A. No, it didn't concern me because the  
20 people I talked to, I trusted that they were giving  
21 me correct information and they believed so also,  
22 even to a director level, that they were under the  
23 same belief.

24 Q. By -- the people you're referring to,

1 Mr. Williams --

2 A. And Mr. Priest.

3 Q. -- and Hassan as well?

4 A. No, not him on that.

5 Q. Okay. Mr. Williams and Mr. Priest?

6 A. Yes.

7 Q. And you believed that they were  
8 telling you the truth?

9 A. Yes.

10 Q. Okay. And --

11 A. I believe they -- they were telling me  
12 what they thought --

13 Q. Okay.

14 A. -- to be the truth, yes, 'cause they  
15 both expressed that to me at a later date.

16 Q. Sure. And you don't have any reason  
17 to believe that at the time they told you that,  
18 that they knew that it wasn't really true?

19 A. No, I don't have any reason to believe  
20 that.

21 Q. Or that they knew that years down the  
22 road, someone at NESB or someone else would say,  
23 no, you can't retire?

24 A. No, 'cause they were counting on it,

1 too.

2 Q. Now, you also testified about your  
3 belief that there was going to be some sort of  
4 committee to look after the transitional employees.  
5 Did you ever see that put in writing, that there  
6 would be such a committee?

7 A. I have seen that in writing, but I  
8 don't remember where. I don't remember. It  
9 could -- it could even be -- it could even be part  
10 of our -- our package.

11 Q. Part of what package?

12 A. The transitional lawsuit information,  
13 maybe. I don't remember. I've seen it somewhere  
14 and I can't recall if it was back then or something  
15 that I've seen going through -- through things.

16 Q. Okay. You would agree with me that  
17 it's not listed in Exhibit 2 and it's not listed in  
18 your offer letter and it's not listed in the slides  
19 from Exhibit 4, wouldn't you?

20 A. Yes.

21 Q. Okay. Were you ever told who would be  
22 on this committee?

23 A. Yes, they told us, but I don't  
24 remember the makeup of it, but that -- when the

1 meeting -- when they talk about it -- because the  
2 question that was asked, What about us? Who's  
3 going to watch after our interests since we're  
4 going to be transition employees with ZF and we're  
5 cutting ties with Ford? And they said there's  
6 going to be a committee that will look after your  
7 best interests. No, I don't remember how that was  
8 to be -- what it was supposed to be composed of.

9 Q. Do you remember specifically who said  
10 that, that there would be such a committee?

11 A. Karl Kehr.

12 Q. And this -- you believe this was at  
13 the May '99 meeting?

14 A. Yes, one of those meetings. I don't  
15 remember if it was the 27th of May.

16 Q. Had you known that there wouldn't be  
17 such a committee, would you have accepted  
18 employment with ZF Batavia?

19 A. I don't know. I don't know. At a  
20 certain point, I think of -- if I had known this  
21 and known this, there would have been a certain  
22 point when enough of that, I would have -- yes, it  
23 would have affected. Would that in itself, not  
24 knowing the other things, no.

1 Q. Okay. Do you have any reason to  
2 believe that Mr. Kehr was -- or at the time he made  
3 that statement about this committee, that he knew  
4 there really wouldn't be a committee?

5 A. No.

6 Q. Now, you've testified about various  
7 changes in policies that -- or changes to promises  
8 that have been made. And I believe that you've  
9 testified about five, overtime pay, personal days,  
10 the ability to retire and hire back, the  
11 opportunity to get into CVT and then this  
12 committee. And I don't have any others in my list.  
13 Are those the only ones that you can recall in  
14 terms of promises that you believe were not  
15 followed through on?

16 MR. SIMON: Objection. The record  
17 speaks for itself. Go ahead and answer it.

18 A. Yes, I believe that's -- that's all I  
19 can recall.

20 Q. Okay. Let's set aside the retirement  
21 issue for a minute, come back to that. With regard  
22 to the change in overtime policy, that change was  
23 made by ZF, correct?

24 A. As -- as far as I know, yes.

1 Q. Do you have any knowledge of anyone  
2 from Ford being involved in that change?

3 A. No, I don't.

4 Q. Do you have any knowledge of anyone  
5 from Ford approving that change?

6 A. No, I don't.

7 Q. And the change in personal days was  
8 also made by ZF?

9 A. I don't know. I don't know if Ford  
10 and ZF talked about those things. I mentioned  
11 before I think they do talk about a lot of policies  
12 and things. I don't know if Ford was involved in  
13 that or not. No, I heard about it from ZF.

14 Q. What sort of policies do Ford and ZF  
15 talk about?

16 A. I don't know.

17 Q. Do you know as you sit here whether ZF  
18 and Ford consult on what the changes to benefit  
19 policies are going to be?

20 A. No, I do not.

21 Q. Do you have any knowledge as to  
22 whether Ford approved the change in personal days?

23 A. No, I don't.

24 Q. Okay. With regard to the opportunity

1 to get into CVT, now when you accepted the offer  
2 with ZF Batavia, you knew you were going to go or  
3 continue to working in CD4E at that point, right?

4 A. It wasn't discussed. It was -- that's  
5 what -- that's all there was at that point. Now,  
6 in the future when -- when CVT started, my  
7 understanding was, yes, I'd have the opportunity to  
8 go over there.

9 Q. You'd have an opportunity, that's what  
10 you were told?

11 A. Yes.

12 Q. Were you told that you would be  
13 guaranteed --

14 A. No.

15 Q. -- to be working in CVT?

16 A. No.

17 Q. In fact, CVT is not yet up, running  
18 production, right?

19 A. Well, they're in the beginning -- they  
20 were supposed to run a hundred pieces this week.

21 Q. Have there been any CVT transmissions  
22 go out the door yet?

23 A. Just two prototypes --

24 Q. Okay.

1           A.     -- to be used in demonstration cars  
2     and stuff.

3           Q.     And do you know, as you sit here  
4     today, whether or not, in fact, you have ever been  
5     considered for positions in CVT?

6           A.     No, I do not.

7           Q.     Have you applied for any positions in  
8     CVT?

9           A.     No, I have not.

10          Q.     And, again, back to this committee, do  
11     you have an understanding as to whether or not that  
12     was going to consist of ZF people or Ford people?

13          A.     My understanding is that it would have  
14     been Ford people and ZF together because the board  
15     of directors was made up of both. And it was my  
16     understanding this will be a committee that would  
17     also be made up of both.

18          Q.     Was it your understanding that the  
19     committee and the board of directors were the same  
20     thing?

21          A.     No.

22          Q.     Or that the committee was going to be  
23     part of the board of directors?

24          A.     No.

1 Q. And I believe you testified that with  
2 regard to the promises about overtime, that that  
3 was, in addition to Mr. Kehr, that there may have  
4 been some conversations with Mr. Williams and  
5 Hassan and Mr. Priest about overtime?

6 A. Yes, just the discussion on we're  
7 going -- the pay structure stays the same. And,  
8 yes, that's the way we understand it also.

9 Q. Okay. Do you have any reason, as you  
10 sit here today, to believe that at the time Hassan  
11 or Mr. Priest or Mr. Williams or Mr. Kehr discussed  
12 with you the pay structure, that they weren't  
13 telling you the truth?

14 A. I don't believe that Mr. Williams or  
15 Mr. Saleh or Mr. Priest would -- I believe what  
16 they told me was true. Karl, I -- I don't know.

17 Q. Okay.

18 A. He's been involved in enough of this  
19 stuff that we've talked about that I -- I can't  
20 say.

21 Q. And you don't have any reason to  
22 believe that Mr. Saleh or Mr. Williams or  
23 Mr. Priest at the time they had those conversations  
24 with you, knew that, down the road, ZF was going to

1 change the way that it paid overtime?

2 A. No, I don't know.

3 Q. And same question with regard to  
4 personal days. Well, let me ask you first, did you  
5 have any discussions with Mr. Saleh or Mr. Williams  
6 or Mr. Priest about personal days?

7 A. No, I didn't.

8 Q. Who, if anyone, made a commitment to  
9 you about what the personal days were going to be  
10 at ZF Batavia?

11 A. I don't recall anyone talking about  
12 those.

13 Q. Okay. Now --

14 A. The only thing I remember about that  
15 was when the communication came out that they were  
16 being changed.

17 Q. Exhibit 2, which I think is right to  
18 your left there, is a document we've referred to as  
19 the gray brochure. And I apologize if you've  
20 answered this already. I'm not clear on it. At  
21 the time you made your decision to accept  
22 employment with ZF Batavia, had you seen that  
23 document before?

24 A. And I believe I answered earlier that

1 I don't recall. It could have been. I remember  
2 seeing it around that time frame. It could have  
3 been attached to -- to my employment thing or  
4 passed out at one of the meetings and I don't  
5 remember.

6 Q. Okay. And I thought you testified  
7 earlier that it was not attached to your --

8 A. Oh, I think I said it could have been,  
9 but I don't remember it being.

10 Q. Okay. Now, if you look to the first  
11 page of this document, where it says Ford general  
12 retirement plan benefits at the time top. And I  
13 know Mr. Hunter reviewed this language with you  
14 earlier. It appears to me that it basically has  
15 two categories of employees. Employees who are  
16 immediately eligible to retire and -- and other  
17 employees. Do you agree with me?

18 A. Yes.

19 Q. You were not immediately eligible to  
20 retire?

21 A. Correct.

22 Q. So you were in the second category  
23 covered by the language that says, otherwise an  
24 employee may not in the future begin benefit

1 payment from the GRP until they have separated  
2 employment from ZF Batavia?

3 A. Yes.

4 Q. During any of the discussions that you  
5 had with any of individuals you've named or  
6 discussions at the questions and answers at the  
7 meetings, do you recall any discussion as to what  
8 separated employment from ZF Batavia meant?

9 A. No.

10 Q. Or do you recall anyone saying that  
11 you can quit ZF Batavia today and rehire tomorrow?

12 A. Not in those meetings. However, the  
13 first that I talked about that was to NESC and then  
14 Len Sennish.

15 Q. And that was well after you had  
16 already --

17 A. That was well after --

18 Q. -- accepted employment at ZF Batavia?

19 A. Yes.

20 Q. Now, who do you currently report to at  
21 ZF Batavia?

22 A. Keith Holmes.

23 Q. He's a ZF Batavia employee?

24 A. Yes, sir. He's a business manager.

1 Q. Would you look at Exhibit 2? Was it  
2 your understanding that this document was a summary  
3 of what the benefits were going to be at ZF  
4 Batavia?

5 A. Yes, I believe that this was what we  
6 were going to have, yes.

7 Q. You didn't believe that it was a  
8 detailed listing of all the policies and procedures  
9 that applied to various benefits, did you?

10 A. I honestly didn't even think about  
11 that. It was something that I took as being, this  
12 is what our agreement is and this is what I'm going  
13 by and this is what I used to be a part of my  
14 decision.

15 Q. Well, now you're not --

16 A. And --

17 Q. -- actually sure about that?

18 A. No, no, 'cause we -- I'm not sure when  
19 I got it exactly, but when -- when we got it, that  
20 was part of -- you know, yes, I -- we've talked  
21 about a lot of these things.

22 Q. Right. But you could have received  
23 this after you had already made your decision to  
24 join up with ZF Batavia, correct?

1 A. Yes.

2 Q. If you look at the second page, I know  
3 Mr. Hunter discussed this with you briefly the  
4 paragraph at the very bottom there. And I'll  
5 submit to you that the language speaks for itself  
6 where it says there the plans described here are  
7 subject to change. Do you remember reading that at  
8 the time you received this brochure?

9 A. No.

10 Q. Okay. Was it your impression that the  
11 benefits at ZF Batavia were subject to change?

12 A. The benefits, yes.

13 Q. Okay. It also says --

14 MR. SIMON: I'm sorry. Interpose a  
15 late objection on the benefits. That might be  
16 unclear, but go ahead and ask your next question.

17 Q. I think it's pretty clear. It also  
18 says in that paragraph that plan provisions and  
19 eligibility do not constitute an employment contract  
20 with any individual. Was it your understanding  
21 that you had an employment contract with ZF  
22 Batavia?

23 A. Yes.

24 Q. And what was it that you believe --

1 did you believe you had a written employment  
2 contract?

3 A. Well, I believe this was part of the  
4 contract. I believe everything -- that everything  
5 we had talked about and that we were told in the  
6 meetings were -- were what we were going to get --

7 Q. I want to --

8 A. -- as --

9 Q. I don't mean to cut you off. Focus  
10 specifically on whether or not you believe you had  
11 a written contract or not.

12 A. Yes.

13 Q. And what did you believe -- what  
14 document, if you can point to it, was the written  
15 contract?

16 A. The one that I signed, the  
17 employment --

18 Q. Okay. The offer letter that you  
19 signed?

20 A. Yes.

21 MR. SIMON: Exhibit 84.

22 Q. Any other documents that were part of  
23 your written employment contract?

24 A. Not that I remember.

1 Q. Okay. Now, you testified earlier  
2 about a demotion issue and I wasn't clear. Is that  
3 an issue that involves Ford at all?

4 A. No.

5 Q. Okay. No one at Ford, to the best of  
6 your knowledge, was involved in demoting you in any  
7 way?

8 A. No.

9 Q. You also testified, I believe, that --  
10 well, strike that.

11 While you were with Ford, your job  
12 assignments changed from time to time, didn't they?

13 A. Yes.

14 Q. You don't dispute that Ford had the  
15 ability to change your job assignments, do you?

16 A. No, I don't.

17 Q. You testified earlier about Jerry  
18 Priest and about him being concerned about  
19 retirement as well. And I believe you said that he  
20 has not been rehired by -- by ZF. Was he ever  
21 hired by ZF Batavia, do you know, Mr. Priest?

22 A. I didn't say that, John did, that he  
23 was hired as a contract guy.

24 Q. Oh, okay.

1 A. He was a transition employee, yes.

2 Q. Okay. Do you know if he ever accepted  
3 an offer of ZF Batavia?

4 A. As a transition employee? You mean --  
5 I'm not --

6 Q. Well, did he ever --

7 A. I don't understand.

8 Q. Did he ever become a ZF Batavia  
9 employee?

10 A. You mean just without a transition tag  
11 on it?

12 Q. Either way. I mean, you're a ZF  
13 employee, right?

14 A. Yes.

15 Q. Did he --

16 A. Yes.

17 Q. -- ever become a ZF employee?

18 A. Yes.

19 Q. Okay. You said that you had a  
20 conversation with Mr. Warden in approximately April  
21 '99 about whether or not you could go to  
22 Sharonville and that he said he didn't think there  
23 were any openings in Sharonville.

24 A. Right.

1 Q. Do you know one way or the other  
2 whether there were openings at Sharonville at the  
3 time you had that conversation with Mr. Warden?

4 A. At the time, there were -- there were  
5 people that asked that question and there weren't  
6 any openings. However, shortly thereafter, a lot  
7 of people went to Sharonville.

8 Q. Okay. Did you ever go back to  
9 Mr. Warden again after you learned that there were  
10 openings and ask if you could go to Sharonville?

11 A. I think -- I believe at the time I had  
12 already signed with -- with ZF.

13 Q. Okay. You also testified that lots of  
14 other employees were allowed to retire or --  
15 rather, I guess, take the retirement benefits, quit  
16 ZF, and then get rehired by ZF. Did I understand  
17 that correctly?

18 A. I don't remember if I said "lots," but  
19 I said some, at least.

20 Q. Okay. Who has been allowed to do  
21 that?

22 A. Gary McGee, Carolyn Malone. There are  
23 more. Let me think. I know there are more, but I  
24 can't remember them right now.

1 Q. Okay. As we're wrapping up today, if  
2 you think of any more, will you --

3 A. Okay.

4 Q. -- let me know?

5 A. Yes, I will. Mike Morfino.

6 Q. Any idea how to spell Morfino?

7 A. I think it's just M-O-R-F-I-N-O.

8 Q. Okay. Anyone else off the top of your  
9 head?

10 A. Not off the top.

11 Q. Okay. Now, since the time that you  
12 left Ford and started employment with ZF Batavia,  
13 your annual wages at ZF Batavia have been higher  
14 than they were at Ford, correct?

15 A. Yes.

16 Q. You were -- I believe your starting  
17 salary at ZF Batavia was \$93,600. Does that sound  
18 right?

19 A. That sounds about right.

20 Q. Your last salary at Ford was, I think,  
21 83,000 and some change. Does that about right?

22 A. Sounds about right.

23 Q. So you got about a \$10,000 increase  
24 when you went to ZF Batavia?

1 A. (Witness nodded.)

2 Q. You just need to answer audibly.

3 A. Yes. Oh, no shaking of the head,  
4 right?

5 Q. Did you get a promotion by going to ZF  
6 Batavia?

7 A. Yes, I did.

8 Q. What was your last job at Ford?

9 A. MPS.

10 Q. And then at Batavia, what --

11 A. Superintendent.

12 Q. Now, the records that I have show that  
13 you received an AIP bonus from ZF Batavia in the  
14 year 2000 of almost \$11,000. Does that sound about  
15 right?

16 A. Sounds about right.

17 Q. Okay. You've also produced in this  
18 case copies of W-2s from your employment at Ford,  
19 as well as your employment with ZF Batavia. And as  
20 I looked at those, it looks as though the gross  
21 wages from your time at ZF Batavia are quite a bit  
22 more than the gross wages from your time at Ford.  
23 Would you agree with me?

24 A. Yes.

1 Q. Okay. Now you've testified for quite  
2 some time today about a lot of different things.  
3 As you sit here today, are you aware of any other  
4 facts that support any of your claims against Ford  
5 in this case?

6 A. No.

7 MR. VANWAY: Okay. I think I'm done.  
8 I want to double check documents, but maybe while I  
9 do that, I don't know if Mr. Hunter has some more  
10 questions or not.

11 MR. HUNTER: One or two for short  
12 follow-up. We don't need to move seats.

13 EXAMINATION

14 BY MR. HUNTER:

15 Q. Rick, if I recall correctly, I think  
16 you made a comment in our discussion that you were  
17 maxed on the vacation?

18 A. Yes.

19 Q. What did you mean by that?

20 A. I have five weeks --

21 Q. Okay.

22 A. -- and you can't get any more than  
23 that, to my knowledge. If there is, I'll talk to  
24 Herb afterwards.

1           Q.     Okay. And so it's safe to say that a  
2     component of your claim as to Rick Ervin -- and  
3     certainly there's no request for additional  
4     vacation or anything like that?

5           A.     Correct.

6           Q.     Okay. I mean, you got what you  
7     understood what you were going to get?

8           A.     On vacation?

9           Q.     Yes.

10          A.     Yes.

11          Q.     Okay. When Mr. VanWay was speaking  
12     about what individuals knew at the time with  
13     respect to the representations they were making  
14     regarding the pay structure, I think was the term  
15     you used. You excluded Karl Kehr from the list of  
16     individuals that you felt was -- let me rephrase  
17     that, okay?

18                 You indicated to Mr. VanWay that you  
19     had no issue whatsoever and that Jerry Priest, Rick  
20     Williams and Hassan conveyed to you what they fully  
21     believed with respect to pay structure. Do you  
22     remember that statement?

23          A.     No, but okay. Go ahead.

24          Q.     Well, to my way of recollection, you

1 distinctly left Karl Kehr out of that list, in  
2 terms of feeling that Karl, for example, was fully  
3 truthful or -- or disclosed everything he knew at  
4 the time that he had the discussions about pay  
5 structure and items of that nature. Do you  
6 remember your testimony there?

7 A. I remember part of that, yes. I  
8 remember saying that I went to Hassan and Dick --  
9 or Hassan, Rick and Jerry about a lot of the  
10 questions I had because -- you know, I trusted them  
11 and they'd been there and that was their  
12 recollection and their feeling both.

13 With Karl, I didn't include him as  
14 part of that because Karl was a part of all -- all  
15 this that we're talking about. And just my own  
16 personal feeling is I don't -- I don't trust what  
17 Karl tells me. And I may sound blunt, but I don't.  
18 I mean, that's my feeling.

19 Q. And I guess, to that end, you don't  
20 trust him as we sit here today, or you didn't trust  
21 him back in 1999?

22 A. As we sit here today.

23 Q. Okay. So you believed what he told  
24 you back in 1999?

1           A.     Yes.   Believed, hoped it to be true,  
2     yes.

3           Q.     All right.   And do you have any  
4     information available to you to indicate that he  
5     wasn't completely honest and accurate at the time?

6           A.     Hearsay.

7           Q.     Okay.   Well, what have you heard?

8           A.     And I can't -- and I can't be specific  
9     on it, just that some of the questions, I guess, in  
10    his deposition.

11          Q.     Okay.   Well, let's talk about that for  
12    a second.   Have you seen Karl's deposition?

13          A.     No, but I've talked to the people  
14    that -- that I think were in his deposition.

15          Q.     Okay.   Who have you spoken to?

16          A.     I believe it was Wayne.

17          Q.     And what did Wayne tell you about  
18    Karl's deposition?

19          A.     Generalities --

20          Q.     Okay.

21          A.     -- just some of the things that --  
22    that he said weren't -- weren't correct, I think,  
23    as he remembered it.

24          Q.     What things did Wayne say weren't

1 correct?

2 A. I can't remember. I can't remember  
3 what those are.

4 MR. HUNTER: Mr. Simon, if you have an  
5 objection, I guess I would ask that you put it on  
6 the record. You're giving, to my way of thinking,  
7 signals --

8 THE WITNESS: No, that wouldn't have  
9 changed my response. I can't remember exactly.

10 MR. SIMON: I was not signaling him.  
11 I was weighing whether I had an objection. It's  
12 perilously close to attorney-client privilege. I  
13 mean, Mr. Whisman, if he's at the deposition and  
14 Mr. Whisman believes it's part of his obligation to  
15 tell all the clients what happened at the  
16 deposition, then I think it was close to attorney-  
17 client privilege.

18 So I was debating if -- I didn't  
19 launch the objection. I think you're really close  
20 to intruding in that area. If a client goes out  
21 and is doing anything in connection with his  
22 lawsuit or doing something with his attorney with a  
23 group of other clients, I think it's turning into a  
24 real attorney-client issue here.

1                   We don't have to debate it. If you  
2 ask him why, I'll just note the objection.

3           Q.     Mr. Ervin, in your discussions with  
4 Mr. Whisman, was Mr. Simon or Mr. Cook or any other  
5 attorney of yours present for any of those  
6 discussions?

7           A.     No.

8           Q.     This is just a general discussion that  
9 you had with Wayne saying, how did Karl's --

10          A.     And that's why I hesitated --

11          Q.     -- deposition go?

12          A.     -- even -- even asking -- even saying  
13 that because it was just a general statement. It  
14 wasn't anything specific.

15          Q.     Okay. Did you talk to Gary about --  
16 Gary Vories about the deposition?

17          A.     No.

18          Q.     How about Don Williams?

19          A.     No.

20          Q.     And you don't remember any specifics?

21          A.     No.

22          Q.     Other than this hearsay, as I think  
23 the term was, do you have any other information  
24 that would lead you to believe that Karl Kehr was

1 not accurate or honest in his presentation in 1999?

2 A. Not in the specifics, just in the  
3 generalities. He was one of the spokesmen that  
4 said that -- you know, these things were happening  
5 and you'd be taken care of and all those things.  
6 And I guess that's why I referred to them, more  
7 than anything. And -- and I have to say -- you  
8 know, him and Dave was in the same group at that  
9 time.

10 Q. Well, Karl was a Ford transition  
11 employee as well, right?

12 A. (Witness nodded.)

13 Q. Is that correct?

14 A. Yes.

15 Q. Was he any different, then, than Jerry  
16 Priest or Rick Williams?

17 A. He's the guy that made the company --  
18 that actually got hold of all the people that  
19 contacted Ernst and Young and -- and did a lot of  
20 the ground work on ZF on that. I guess he had a  
21 lot more to do than Rick Williams and Jerry Priest.

22 MR. HUNTER: Okay. I don't think I  
23 have anything else at this time.

24 MR. VANWAY: Sir, I just have a couple

1 more and I think maybe one or two more documents.

2 EXAMINATION

3 BY MR. VANWAY:

4 Q. One, just a quick follow-up based on  
5 questions Mr. Hunter just asked. I just want to  
6 make sure I got this right. Up until the time you  
7 talked to Mr. Whisman about Mr. Kehr's deposition,  
8 you had no reason to disbelieve Mr. Kehr; is that  
9 accurate?

10 A. Other than what I said, that things  
11 were -- he was one of the representatives and  
12 things haven't gone well with the things that we  
13 were told and the transition people and all that  
14 and I categorize him as one of the representatives  
15 that was a big part of that.

16 Q. Okay. Now, let's go ahead and mark  
17 this. Mr. Ervin, you've been handed what's been  
18 marked as Exhibit 89, which is a series of e-mails,  
19 all of which appear to relate to your specific  
20 retirement issue. And feel free to take as much  
21 time as you want to review that document. I don't  
22 have a lot of specific questions on it, but feel  
23 free to take your time to review it. Whenever  
24 you're ready to go, let me know.

1 A. Okay.

2 Q. Have you seen this document before,  
3 Mr. Ervin?

4 A. I have not seen the -- the top page,  
5 that I can remember. Yes, I -- yes, I did. This  
6 is what I was sent after Karl talked with Ford  
7 legal.

8 Q. Okay. Have you seen all pages, 000262  
9 to 266?

10 A. Yes, I submitted them.

11 Q. This is, in fact, one of various  
12 e-mails you submitted and responses thereto  
13 regarding retirement issues?

14 A. Yes.

15 Q. You testified earlier about an  
16 amendment, that you were told there was an  
17 amendment that covered some people, but didn't  
18 cover you?

19 A. Yes.

20 Q. If you look on the first page of this  
21 Exhibit 89, second-to-the-last paragraph, it says  
22 we did amend the GRP, et cetera. Is that the  
23 amendment that you were referring to when you  
24 testified earlier?

1 A. No.

2 Q. What amendment were you referring to?

3 A. The people that -- that you asked for  
4 the names for, like Carolyn Malone and Gary McGee  
5 and those people. Those people also -- an  
6 amendment was written so that they could retire  
7 with 30 years combined service and hire back with  
8 ZF. They were Ford employees, not transition  
9 employees.

10 Q. Have you heard the term "30 and three"  
11 before?

12 A. No.

13 Q. No? My understanding was that there  
14 was some sort of policy or plan where, if you were  
15 going to have 30 years of service within three  
16 years of the joint venture, that then you could  
17 retire, draw your retirement and go work for ZF.  
18 Are you familiar with that concept or not?

19 A. No.

20 Q. Okay. You wouldn't -- if there were  
21 such a classification, you wouldn't fit within that  
22 classification, right? You would not have had 30  
23 years of service within three years of accepting  
24 employment with --

1 A. No, three and a half years.

2 Q. Missed it by six months then, okay.

3 In fact, your eligibility for retirement was April  
4 '03?

5 A. Yes.

6 Q. Okay. And I'm still not clear on this  
7 amendment that you're talking about. I mean,  
8 what -- do you understand what the difference was  
9 between the employees that were allowed to retire,  
10 Carolyn Malone and the others that you testified  
11 about --

12 A. Okay.

13 Q. -- and yourself?

14 A. My understanding -- this is my  
15 understanding --

16 Q. Sure.

17 A. -- is that there was an amendment  
18 written for the Ford employees. Those that stayed  
19 Ford that decided I'm not going to join ZF and I'm  
20 staying here 'cause all of those employees stayed  
21 at ZF Batavia. Those people don't have -- I don't  
22 know about the 30 and three, but same desk rule.  
23 An amendment to bypass the same desk rule, IRS same  
24 desk rule policy because they are doing the same

1 job one minute later than they were doing when they  
2 retired.

3 Q. Is it your understanding that you fit  
4 within that amendment or that you don't?

5 A. I'm not sure how the amendment was  
6 written, but I don't understand why the transition  
7 people would be treated any differently than that  
8 because in these things it said -- part of it is  
9 they can hire back at a later date. And it was  
10 mentioned that that would be six months later.

11 Well, if they were -- had the ability  
12 to hire back one minute later or whatever --  
13 whatever, however it was done, why couldn't we?

14 Q. And by "we," you're referring to the  
15 transition employees?

16 A. Transition people, yes.

17 Q. And do you know off the top of your  
18 head with respect to Carolyn Malone and I think the  
19 other two employees that you mentioned, do you know  
20 when they became eligible to retire? Do you know  
21 what year it was?

22 A. I believe it was last year and this  
23 year.

24 Q. You believe that some retired in 2003?

1           A.     I can't remember the timing on it, but  
2     I think -- I think Carolyn might have been in  
3     that -- in that time period or just -- just before.

4           Q.     So it's possible that all of them may  
5     have retired prior to 2003?

6           A.     Possible.

7                   MR. VANWAY:   Okay.   Mr. Ervin, I don't  
8     believe I have any further -- oh, I'm sorry.  
9     Another false start.

10          BY MR. VANWAY:

11          Q.     I do have this.   I received some  
12     documents last week from your attorneys and I'm  
13     just not sure what they are and I'm wondering if  
14     you might be able to help me with it.   And I don't  
15     think I need to mark these necessarily, but they're  
16     Bates stamped at P01011 through P01015.

17                   And I ask if you could just take a  
18     moment to review those and let me know when you've  
19     done so.

20                   MR. SIMON:   I think his question is  
21     whether you've seen the document before.

22                   MR. VANWAY:   Steve, you're predicting  
23     my question.   That is going to be my question.

24          A.     No, I have not seen that one.

1           Q.     That's easier. Mr. Simon is right.  
2     We can short circuit it. If you can just go  
3     through each one of those, tell me if you've ever  
4     seen any of those documents before.

5           MR. SIMON: I thought I might be  
6     accused of coaching the witness there, but I  
7     thought I was being helpful.

8           MR. VANWAY: You were being helpful  
9     and I appreciate that. I would never falsely  
10    accuse you.

11          MR. SIMON: I think I was a couple  
12    times today, but I'll let it go.

13          A.     No, no, I have not.

14          Q.     Okay. By the way, Mr. Ervin, the  
15    records that I have show that the last profit  
16    sharing that you received from Ford was a little  
17    over \$9,000. Does that sound about right?

18          A.     I have no idea.

19          MR. VANWAY: Okay. Fair enough.  
20    Thank you, Mr. Ervin. Now -- now I'm finished. I  
21    don't know if Mr. Hunter has any more or not.

22          MR. SIMON: No questions. We will not  
23    waive signature.

24

\* \* \*

1 (Deposition concluded at 4:49 p.m.)

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Rick Ervin

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1 C E R T I F I C A T E

2

3 STATE OF OHIO :

4 : SS

5 COUNTY OF HAMILTON :

6

7 I, Susan M. Barhorst, a Notary Public in  
8 and for the State of Ohio, duly commissioned and  
9 qualified, do hereby certify that prior to the  
10 giving of this deposition the within-named RICK  
11 ERVIN was by me first duly sworn to testify the  
12 truth, the whole truth, and nothing but the truth;  
13 that the foregoing pages constitute a true,  
14 correct, and complete transcript of the testimony  
15 of said deponent, which was recorded in stenotypy  
16 by me, and on the day of October 2003 was  
17 submitted to counsel for deponent's signature.

18 I further certify the within deposition was  
19 duly taken before me at the time and place stated,  
20 pursuant to the Federal Rules of Civil Procedure;  
21 that I am not counsel, attorney, relative or  
22 employee of any of the parties hereto, or their  
23 counsel, or financially or in any way interested in  
24 the within action, and that I was at the time of

1 taking said deposition a Notary Public in and for  
2 the State of Ohio.

3 IN WITNESS WHEREOF, I have hereunto set my hand  
4 and notarial seal at Cincinnati, Ohio, this  
5 day of October 2003.

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Susan M. Barhorst, Notary Public  
in and for the State of Ohio.  
My commission expires  
February 18, 2004

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